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AUTHOR Beckham, Joseph C.
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ABSTRACT

Case law concerning the schools covers a variety of areas, such as the constitutional rights of students and teachers, that were not at issue to previous generations of school leaders. This monograph is the 15th in a series designed to help school officials keep up to date on current court decisions and their implications for local school district management and policy. Cases included were selected from judicial decisions found in federal and regional court reports in the period from July 1, 1992 to June 30, 1993. The cases were selected on the basis of their relevance to contemporary problems in public school settings, their definitiveness as articulations of existing law, and their reliability as consistent guides to educational policy making and practice. The case summaries are organized according to the following general topics: (1) school boards and board members; (2) administrators; (3) finance; (4) teachers and other district employees; (5) pupils; (6) special education; (7) religion; and (8) torts and related statutory liability. Appended are reference notes, legal citations for each section, and a glossary of selected legal terms. (MLF)

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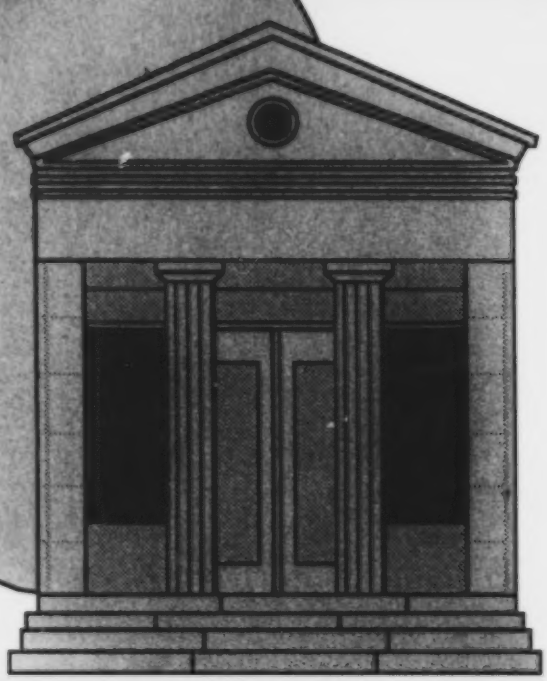

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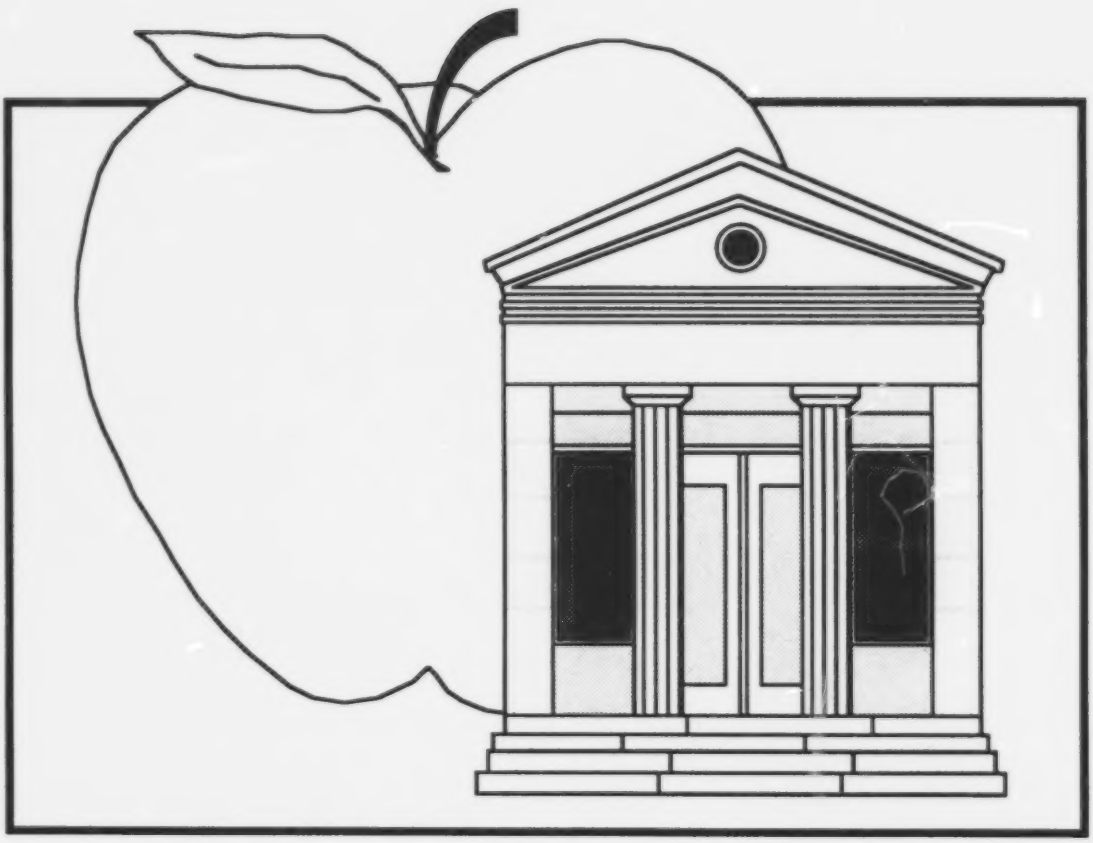
School Officials and the Courts:

Update 1993

Joseph C. Beckham



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Glen E. Robinson
President
Director of Research

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Foreword

School Officials and the Courts: Update 1993 is the 15th in the series of ERS monographs designed to summarize judicial decisions on elementary and secondary education issues. The monographs in this series have been published biennially from 1975 through 1981, and annually since 1981, to help school administrators and others keep aware of court activities in the field of public education.

Today, case law concerning the schools covers a variety of areas — such as the constitutional rights of students and teachers, educational "adequacy," and tort liabilities — that were not at issue to previous generations of school leaders. For this reason, school officials need to keep up to date on current court decisions and their implications for local school district management and policy.

The Educational Research Service asked Dr. Joseph C. Beckham to prepare the summaries and discussions in this monograph. In his discussion of court cases, Dr. Beckham presents technical legal information in a readable, comprehensible style; his comments are intended for the general background and information of laymen, and not as legal advice. His summaries and analyses should be useful to school administrators, board members, students of education law, and others concerned with recent court decisions in the field of elementary and secondary education.

Dr. Beckham is eminently qualified to write *School Officials and the Courts: Update 1993*. He is a Professor in the Department of Educational Leadership at Florida State University's College of Education, and holds a J.D. in law and a Ph.D. in educational administration. For more than 15 years, he has served as a consultant and legal counselor on matters of law and education to school districts, institutions of higher education, state departments of education, and several national organizations. He is on the authors' committee for *West's Education Law Reporter*, and is past-President of the National Organization on Legal Problems of Education. His many publications include articles and law reviews in the *Journal of Education Finance* and the *Journal of Law and Education*, and the monograph *Legal Aspects of Teacher Evaluation*.

ERS expresses appreciation to Dr. Beckham for his carefully prepared summaries of judicial decisions and his insightful comments on the meaning of the various cases in this publication.

Glen E. Robinson
Director of Research
Educational Research Service

Introduction

The cases included in *School Officials and the Courts: Update 1993* were selected from judicial decisions found in federal and regional reporters in the period from July 1, 1992 to June 30, 1993. These cases provide a general overview of school law issues for the practicing administrator, teacher, or school board member. In general, chapter titles conform to previous editions of this annual monograph, with the exception of a section on special education, which has been added for 1993.

No annual compilation and summary of selected school law cases can be the definitive authority on legal issues that confront today's educator. Judicial opinions vary among jurisdictions and are subject to revision in the course of time or changed circumstances. State and federal court decisions are often limited in terms of generalizability, depending on the application of a particular state's legal standards or the scope of a court's jurisdiction.

Previous editions of *School Officials and the Courts* may be consulted to provide greater depth and scope of coverage as well as insight into long-term trends in case law. Future editions will provide a subsequent history of the cases reported and summarized in this work, indicating instances in which a case has been reversed or otherwise modified on appeal.

This monograph is designed primarily to provide a broad scope treatment of case law involving public school issues. The cases were selected on the basis of their relevance to contemporary problems in public school settings, their definitiveness as articulations of existing law, and their reliability as consistent guides to educational policy making and practice. The summaries emphasize brevity and concise treatment of principal legal issues in an effort to inform without presenting undue complexity or procedural irrelevancies. The author's narrative and background commentary are limited to brief introductory materials in favor of an emphasis on the case summaries.

The reader is encouraged to extrapolate legal principles that can guide conduct, but cautioned to recognize that unique variables such as altered circumstances or jurisdictional differences may modify the application of case law. In reviewing the summaries, it is particularly important to consider the legal rationales that guide the judge's resolution of an issue. In the context of public education, school officials must understand these rationales in order to apply the cases in making decisions or formulating policies based on fundamental fairness and reasonable principles of law.

School Boards and Board Members

As state agencies, school boards have the authority to exercise considerable discretion on behalf of public schools. However, the discretionary authority of the board is tempered by the implied standards that boards must act reasonably and that board policy must be rationally related to a valid state purpose. Discretionary authority must be exercised in good faith for a proper motive.

School boards derive authority from state constitutional provisions and legislative enactments. In most instances, courts grant considerable discretion to the local board in carrying out its mission to provide for public education, often granting powers that are implied rather than specifically granted in state laws. However, other constitutional and statutory provisions may expressly constrain the power of school boards. In the past year, courts have examined the authority of school boards in instances involving policy decisions ranging from graduation requirements to disciplinary standards, and have considered the extent of board discretion in setting personnel policy and selecting competitive bids.

Local Union's Use of Inter-School Mail System Is Restricted

An Indiana school board notified the local teachers' union that the board could no longer permit the use of its inter-school mail delivery for union correspondence with teachers. The board was acting on its understanding of *Regents of the University of California v. Public Employment Relations Board,*[1] a case in which the United States Supreme Court ruled that delivery of union correspondence by the university's campus mail system was a violation of the Private Express Statutes, 18 U.S.C. Sections 1693-99. The board grieved this determination, and an arbitrator held that delivery of all union correspondence except that regarding only the business of the association (for example, letters and flyers notifying teachers of association meetings and workshops) was permissible under the federal statutes. However, when the district informed the U.S. Postal Service of the arbitrator's decision, the Service formally notified the school district that compliance with that decision would violate federal criminal law and would make the district, the union, and employees vulnerable to criminal and civil penalties. The district then brought suit against the union and the Postal Service for a declaratory judgment, asking the federal court to determine what association mail the district was permitted to carry.

The Seventh Circuit Court of Appeals affirmed a district court decision, and held that delivery of the association's correspondence through an inter-school mail system operated by the school district violated the Private Express Statutes. The court considered the "letters of carrier" exception to the federal government's monopoly on postal services. School districts and other "entities" that regularly transport correspondence may only carry letters or packets that "relate to . . . the current business of the carrier or to some article carried at the same time by the same conveyance." Permissible correspon-

dence under this exception is that which is sent by or addressed to the carrier. The appeals court considered that mail sent on behalf of the school district would be permissible, but that teachers' union mail, with one exception, would not be exempted. This one exception involved joint committees established under the bargaining agreement. Since correspondence relating to the business of those committees might well be "on behalf of" the district, it was regarded as a permissible item for delivery by the school district.[2]

Sick Leave "Bank" Provisions Violate Title VII

An Illinois school district and its teachers' association had entered into an agreement involving two leave policies having to do with maternity leave. The first policy precluded a pregnant teacher from combining paid sick leave with unpaid maternity leave, although a nonpregnant teacher could take paid sick leave combined with other types of unpaid leave. The second policy concerned a sick leave bank that allowed teachers who did not use all their sick leave in a particular year to accumulate the remaining leave. The policy provided additional paid sick leave days for those eligible teachers who exhausted their accumulated paid sick leave owing to a prolonged and extended catastrophic illness. Pregnancy was the sole nonelective medical disability explicitly excluded from the sick leave bank provision.

The United States of America brought a lawsuit under Title VII of the Civil Rights Act of 1964 against the board and the teachers' association, alleging that the two leave policies discriminated against pregnant teachers.

The federal appeals court affirmed a lower court's holding that the maternity leave policy did not violate federal law prohibiting discrimination. Title VII and related federal statutes prohibit an employer from discriminating on the basis of sex, and gender-based discrimination would include discrimination based on pregnancy, childbirth, or related medical conditions. The government argued that the policy did not treat pregnant teachers the same as nonpregnant teachers. However, the appeals court found that this argument, when carried to its logical conclusion, would grant pregnant teachers greater leave benefits than nonpregnant teachers. The government's position would allow pregnant teachers to use accumulated paid sick leave and then begin their nondiscretionary maternity leave for up to five school semesters. In contrast, nonpregnant teachers did not have any leave choices that would provide them with a similar leave arrangement.

However, the appeals court ruled that the second policy (the sick leave bank provisions) did violate Title VII. Withdrawals from the sick leave bank were available only for a teacher's prolonged and extended catastrophic illness, and the policy specifically excluded maternity benefits as the sole nonelective medical disability. The board awarded sick leave bank benefits for such disabilities as back strain, gall-bladder surgery, and a broken leg. The court reasoned that if such disabilities were worthy of sick leave bank benefits, pregnancy-related disabilities should also be eligible.[3]

Board Policy on Home Schooling Is Upheld

West Virginia statute provides that any home-schooled child whose composite score on a nationally normed achievement test falls below the 40th percentile must receive remedial instruction, and if the score remains below the 40th percentile after that remedial help, the child is

ineligible for home schooling. Parents of a child *who tested in the 38th percentile after two years* of home study challenged the requirement after they received a notice from the local school board that their child was no longer eligible for home schooling. They asserted that they had a right to educate their child as they saw fit and claimed that they received unequal treatment because children with similar scores in public schools were not treated the same as their child.

The federal district court granted a summary judgment to the school board and rejected the view that the parents have a constitutionally protected fundamental right to educate their child at home. The court required only that the state show a rational basis for its policy. In meeting that test, the court concluded the statute was a reasonable attempt to regulate instructional quality, consistent with the state's interest in educating its children. It also held that there was no violation of equal protection of the laws, since the group of "all home-school children" was not the equivalent of a racial group or gender group that would justify a rigorous standard of judicial review.[4]

Court Permits Community Service as Prerequisite to Graduation

A Pennsylvania school board instituted a community service requirement for all students as a prerequisite to graduation. All students were required to complete 60 hours of unpaid service approved by the district. Seventy approved community service organizations were identified in the board's program, and students could submit a plan to work with another organization or describe an "experiential situation" for approval. The school district adopted a curriculum for the program identifying four objectives and specifying the method by which students would certify *their programs, receive a grade, and earn a half-*unit of course credit.

Students and parents who objected to the requirement challenged the policy as a violation of free speech under the First Amendment and as "involuntary servitude" under the Thirteenth Amendment.

The Third Circuit Court rejected both of the claims of a constitutional violation. The court held that the service requirement was not "sufficiently imbued with elements of communication" to involve expressive conduct under the First Amendment. Students did not need to embrace the ideas behind the community service program, nor were they required to have a favorable opinion towards their service. In fact, a student who complained while doing the required hours would receive the same treatment as a student who did not complain. The prohibition against slavery in the Thirteenth Amendment was inapplicable because students had alternatives to completing the service, even if the alternatives might be unappealing. That the service was performed without pay does not mean that the activity could be characterized as involuntary servitude. As an illustration, the court noted that attorneys in private practice are required to offer *pro bono* services as a condition of practicing law.[5]

Grade Reduction During Period of Suspension Is Unconstitutional

An Indiana high school student's grades were reduced as punishment for an alcohol-related instance of misconduct. The school's student handbook stipulated that knowingly possessing or consuming alcoholic beverages would subject a student to suspension or expulsion. A grade reduction of 4 percent of the student's

grade for a nine-week grading period was applicable for each class missed each day during a suspension. The student received a five-day suspension for an incident in which she had consumed alcohol at the home of a friend prior to reporting for a medical biology class at a local hospital at the end of fifth period.

The student brought suit against the local school board, contending that the grade reduction policy violated substantive due process rights under the Fourteenth Amendment.

Although the federal district court expressed a reluctance to intervene in public school disciplinary policies, the court proceeded to evaluate whether or not the school's policy was constitutional. Noting that a student's academic record has importance for the student's academic standing, and affects the student's opportunity for further education or employment, the court considered the student's claim that the use of an academic penalty for a nonacademic offense constituted arbitrary and capricious action on the part of the school district.

The court adopted the view that school policies must meet a test of reasonableness and must bear a rational relationship to the school's mission of providing public education. The school took the position that the grade reductions were imposed as part of the disciplinary action to discourage the consumption of alcohol during school hours. However, the court held that this rationale was not sufficient to establish a reasonable basis for the policy. To warrant an academic sanction, the student's misconduct must be directly related to the student's academic performance. Failing that, the rule was held unconstitutional and the school district was ordered to correct the student's grades.[6]

Union Challenges Board's Smoke-Free School Policy

A Connecticut school employees' union filed a prohibited practice complaint to contest a local school board's decision to impose a smoke-free policy. The board had approved a new policy that prohibited smoking at all times both inside and outside on school property, consistent with the state statute that made smoking policy completely within the employer's discretion. The union's position was that the board must negotiate with school employees over the policy because the policy constituted a unilateral change in work conditions and was a mandatory subject of bargaining.

The Supreme Court of Connecticut ruled that even though a ban on smoking in the school setting is a managerial prerogative, the board must still bargain with the union if the policy has a substantial secondary impact on employee working conditions. The state statute law gives employers the authority to implement a non-smoking ban, but the law cannot be construed to mandate an employer to ban smoking or to prevent bargaining over the secondary impact of the policy on working conditions. While there is a clear statutory ban on smoking inside the school building and when school is in session, smoke-free policies applied when the school is not in session or outside the school building but on school grounds are discretionary and would require bargaining if the impact on working conditions was substantial. The court returned the case for a determination as to whether the impact of a smoke-free school environment would have a substantial impact on working conditions.[7]

Residence of Board Member Leads to Removal from Office

New York law requires that an elected board member be a registered voter residing within a community school district. Based on this law, the Chancellor of the New York City School System issued an order challenging a member of a local school board, and instructing the local board to fill his "vacant" position. Although registered to vote in the local district, the board member did not maintain a residence there.

In challenging the Chancellor's decision, the board member sought an injunction against efforts to remove him from office and a judicial interpretation that residency was established by being a registered voter within the local district. The state appeals court disagreed, holding that the construction of the statute by the agency designated to uphold it should be upheld. In this case, the office of the Chancellor had determined that the statute required a board member to fulfill two conditions: 1) he/she must be registered to vote in the district; and, 2) he/she must reside in the district. Although the statute was susceptible to different interpretations, the Chancellor's interpretation was accorded the greater weight.[8]

Local Board's Discretion in Nonrenewal Policy Is Upheld

The Texas commissioner of education reinstated annual contract teachers who had been notified by the local school board of nonrenewal based on financial exigency. The commissioner's decision to renew the teachers had been based on interpretation of state statutes requiring that a local board consider periodic written evaluations of each teacher before deciding not to renew the teachers' annual contract. State law imposed an April 1 deadline for notification of nonrenewal, but the school board's policy did not require written evaluations of annual contract teachers to be completed until June 15 of each year. Since the board was faced with an April 1 deadline and incomplete evaluations for the current year, the board considered the last available evaluations, those of the previous year, in proposing not to renew the expiring contracts of district teachers.

After the local school board appealed the commissioner's decision, a Texas appeals court ruled that the commissioner had exceeded administrative authority by requiring that a teacher's current year evaluation must be considered before a decision was made not to renew the teacher's contract. The state statute was interpreted by the court to require only that periodic written evaluations of each teacher be considered before deciding not to renew contracts. There was no explicit "current year" requirement in the text of the statute law; the law itself, when viewed in its entirety, was designed to place responsibility for administration in the hands of local school boards. Because the method of administration prescribed under the law was exclusive to local boards, the commissioner's decision had the effect of overruling policies promulgated by the legislature to grant local boards the authority to establish matters of policy and procedure in administering the statute. The commissioner thus exceeded his statutory authority by imposing a policy on local boards.[9]

Court Strikes Down Requirement that Construction Projects Employ State Residents

A provision of the Pennsylvania Public School Code required that all public works construction projects employ residents of the state of

Pennsylvania. A New Jersey contractor and its employees challenged the requirement as a violation of the privileges and immunities clause of the United States Constitution. The Pennsylvania Attorney General, while conceding that the statute discriminated against nonresidents, argued that Pennsylvania's interest in reducing unemployment among its construction workers was a substantial reason justifying the provision.

The federal district court ruled that the provision violated the privileges and immunities clause and awarded summary judgment to the contractor and employees. The U.S. Constitution bars discrimination against citizens of other states where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states. While unemployment within a state is a serious "evil" which may be addressed in state law, the State of Pennsylvania failed to demonstrate that non-Pennsylvanians were the peculiar source of that evil. In particular, the court noted that expert testimony had established that the unemployment impact of out-of-state hiring was minuscule, thus demonstrating that the discrimination against non-resident construction workers in public works contracts was not justifiable.[10]

Bidder's Prequalification Does Not Create Presumption of Responsible Bid

A disappointed bidder for a construction project in an Alabama school district sued the school board, alleging that the board should have awarded the contract to the low bidder. The board required each bidder to meet detailed criteria in order to be "prequalified" to submit bids. The low bidder did prequalify, but the board reserved the right to reject any bid and to select the "lowest responsible bidder."

The Supreme Court of Alabama held that a local school board, having required a bidder on a school construction contract to prequalify, could still award the contract to a contractor who submitted a higher bid on the basis that the higher bidder was the "lowest responsible bidder." The court concluded that prequalification does not necessarily represent a finding of responsibility, and found that the board had properly considered the lowest bidder's size, experience, and amount of equipment and other resources in determining who would be awarded the school construction contract.[11]

Bidder's Mistake Leads to Forfeiture of Bid Bond

Oklahoma statute law requires that every bidder on a public construction contract accompany its bid with a bond of 5 percent. An Oklahoma construction company and its bid bond issuer sought to recover a bid bond that was forfeited when the company failed to execute the contract after it was designated the successful bidder on a school construction contract.

The construction company had responded to a solicitation for renovation of six school buildings in the district. The president of the construction company had relayed an air conditioning subcontractor's bid as $45,000 rather than $145,000 and the wrong information had been transmitted and used in the prime contract bid. After being informed that the company's bid was the low bid on the contract, the president rechecked the bid and discovered the $100,000 error. The company immediately informed the school's architect and the local board of the error, requesting that the bid be withdrawn and the bid bond released. Despite this notice, the board formally awarded the contract to the construction

company. The company requested a judicial determination that its obligations under the bid and bid bond were discharged and exonerated by virtue of a unilateral mistake.

The state appeals court noted that state statute law requires an apparently successful bidder who fails to execute the contract to forfeit the 5 percent bid bond. The contractor argued that he was not the apparently successful bidder because he had informed the school board of the error and asked to withdraw the bid before the school board awarded the contract. However, the court disagreed with this interpretation, holding that the term "apparently" means that the successful bidder is the one who will be formally awarded the contract unless something unusual happens. The law requires the contract to be awarded to the lowest responsible bidder unless there are specific reasons why that bid is not responsible. Therefore, the court concluded that "apparently successful bidder" is synonymous with lowest bidder, and the construction company became the apparently successful bidder when the bids were opened and its bid was lowest. Although the state has long recognized that courts have equitable power to rescind or cancel a contract entered into when one party labors under a material mistake of fact, the statute on public construction contracts restricts the discretion of courts to exercise that equitable power.[12]

Board's Discretion in Selecting Bid Is Upheld

An Alaska school board that solicited bids for district copying services was challenged by an unsuccessful bidder who had held the previous contract. The bidder sought to establish that the board had breached an implied contractual duty to fairly and honestly consider all proposals for the copying contract.

A copier evaluation committee had been established to advise the board on the relative merits of the various bids based on the performance and cost of the equipment proposed. The committee rejected the copiers proposed by the unsuccessful bidder, in part because of a previous history of unsatisfactory performance in the school district.

Several flaws in the bid process were cited by the unsuccessful bidder. Although reference letters from a bidder's clients were to be sent directly to the district, one bidder obtained the letters from clients and then included them in the bid. The district also considered and ultimately accepted a low-volume copier from the successful bidder, even though that particular copier had not been part of the bidder's original bid submission.

The Supreme Court of Alaska concluded that the school district's actions did not constitute a breach of contract. The court applied a reasonable basis test, in which the fundamental inquiry is to determine whether the board's decision is supported by the facts and has a reasonable basis in law, even if the court might not agree with the board's ultimate decision. While the board is subject to an implied duty to fairly and honestly consider all bid proposals, it is vested with broad discretion in making its determination about the bid to be selected. The flaws in the bid process were characterized by the court as "minor" variances that did not render any bids non-responsive to the bid proposal or create evidence of unfairness on the part of the board.[13]

Administrators

Public school administrators are distinguished from other school employees by their unique contractual relationship with the district board and their leadership responsibilities. Provisions for selecting, hiring, evaluating, and disciplining or dismissing administrators often differ from those for other professional employees. For example, administrators typically do not have tenure unless they are specifically given that entitlement under statute or board rule. Constitutional protections associated with free speech, free association, and due process of law apply to administrators, as do provisions barring discrimination. But the entitlements and authority of administrators are often highly specific to the laws and regulatory standards of the particular state.

Superintendent's Vocal Criticism of Board Candidates Compromises Close Working Relationship

The United States Supreme Court has refused to review a case in which a Texas public school superintendent was suspended by a local school board four months after board elections.

The superintendent had been criticized for his policies on grading, teacher assignment, and the separation of authority between board and administrative staff. As elections for the board approached, the controversy led the superintendent to vocally oppose some candidates for the board. The newly elected board members were all candidates who had been opposed by the superintendent.

In the next four months, relations between the school board and the superintendent deteriorated rapidly. The board issued specific directives to the superintendent, and there was disagreement as to whether the superintendent met these directives. An evaluation of the district by the Texas Education Agency resulted in a lowering of the district's accreditation rating, based in part on the poor relations between board and superintendent. After this evaluation, the board met and relieved the superintendent of his duties, but with full pay and benefits through the duration of his current contract. The superintendent challenged the board's decision, arguing principally that the decision was an attempt to punish him for his exercise of free speech under the First Amendment.

The full United States Court of Appeals for the Fifth Circuit concluded that the superintendent's vocal criticism of the candidates precluded an effective working relationship with the new board. The court reasoned that, even if the superintendent's speech was on a matter of public concern and thus constitutionally protected, the school district's interest in efficiency and effectiveness outweighed his rights to free speech and political association. The court noted that the rights of those in sensitive, confidential leadership positions are more easily outweighed than are those of rank-and-file employees. By asserting his free speech rights, the superintendent infringed upon the board's right to loyal and efficient public service. In balancing the rights and interests involved, the appeals court held that the board's interests outweighed the superintendent's rights to free speech.[1]

Union's Public Criticism of Principal Is Constitutionally Protected Speech

A principal with 18 years of experience in a Kentucky school district was involved in an incident in which he introduced an assistant clerk in the school media department to a new teacher with the words, "Have you met Sylvia Covington, our resident nigger?" The clerk, embarrassed and upset, left the room immediately, and later contacted the superintendent and submitted a written letter of complaint. After investigation, the local board voted to charge the principal with unprofessional conduct and insubordination. The principal, who contended that the remark was nothing more than a jest which was part of the banter he and the clerk had engaged in over their 18-year working relationship, requested a public hearing before the school board. During this period, a union representative told a reporter that if the board did not fire the principal, the union would file suit against the school board. This threat was broadcast by local media. The board dismissed the principal after the hearing, but the decision was reversed on appeal, and the principal was ordered reinstated with back pay.

The principal filed suit against the clerk, the school board, the superintendent, the union, and the union representative, alleging a conspiracy to violate his constitutional rights to procedural and substantive due process and equal protection in violation of Section 1983 of the Civil Rights Act of 1964. In particular, the principal claimed that the union and its representative, in retaliation for previous conflicts, used political influence to attack his reputation and ensure his dismissal. The court ruled in favor of the clerk, the principal settled with the superintendent and board, but the district court granted a $1 million judgment against the union and its representative.

On appeal, the Sixth Circuit Court of Appeals ruled against the principal and found that the union and its representative's vocal opposition to the principal during the termination hearing did not violate his due process rights. The court emphasized that the union representative's actions were protected by the First Amendment right to free speech. Actions taken in exercise of free speech rights to petition the government for removal of an employee are constitutionally protected, even if they are unfair or unreasonable.[2]

Principal Is Not Liable for "Homosexual Tendencies" Remark

A substitute teacher who sought full-time employment in a Kansas high school was rejected in favor of a recent college graduate with student teaching experience at the high school. The principal of the high school explained to the director of social studies that the substitute had been rejected for the job because the principal perceived "homosexual tendencies" in the substitute. The substitute teacher was married with two children and made no claim to being homosexual or heterosexual. The substitute then filed suit against the principal, asserting that he had been denied the position due to "perceived homosexual tendencies" in violation of his Fourteenth Amendment rights to equal protection.

The Tenth Circuit Court of Appeals ruled that the principal was entitled to qualified immunity because the plaintiff/teacher failed to prove that the principal's conduct violated clearly established constitutional law of which a reasonable person would have been aware. The court considered whether a reasonable person could have been expected to know it was unlawful to arbitrarily discriminate against those perceived as homosexuals. Since judicial interpretation of equal

protection under the Fourteenth Amendment has not clearly established a standard with regard to the rights of homosexuals, the court concluded that the issue was too confusing to provide clear guidance for the articulation of a "reasonable person" standard.[3]

Principal's Continuing Contract Status Is Upheld in Reassignment

A Minnesota elementary school principal with continuing contract status and 25 years in the local district was placed on unrequested leave after the position of elementary principal was abolished in January of 1992. In April of that year, the board created the position of half-time superintendent, half-time elementary principal and filled the position with a person with less seniority than the former principal. The local board offered the former principal a teaching position for the 1992-93 school year, but the principal challenged the staffing decision, arguing that he should at least be offered a half-time teaching and half-time principalship position.

On review by a state appeals court, the former principal was successful in asserting his continuing contract rights. The court concluded that the board had ignored the former principal's employment rights under state law, which stipulated that the more senior employee has the right to maintain a current position and cannot be bumped by less senior staff. The court ordered that the former principal be reinstated to the half-time principal position.[4]

Gap in Evaluations of Principal Does Not Create Contractual Rights

A North Carolina principal on annual contract was not recommended for career status at the end of his third year of probationary status in the district. Although extensive evaluations of the principal's performance had been undertaken by district officials, a gap in required written evaluations had occurred in the second year of the principal's service. The record of evaluations produced by the school district indicated deficiencies ranging from lack of knowledge of elementary education practices to failure to keep scheduled appointments and absences from the school site. The district's decision not to recommend the principal for career status had the effect of a non-renewal of the principal's contract of employment.

In challenging the board's decision, the principal contended that, because the board failed to evaluate him in the proper manner and on the proper number of occasions in the second year of his contract, the board was prohibited from denying him employment until the evaluations were completed and the principal could respond. While a teacher or administrator may allege that the failure to comply with requirements for evaluation is evidence of arbitrary and capricious action on the part of the board, the principal's claim was distinguishable because he asserted that the statute requiring evaluations created an independent cause of action.

Although the state appeals court agreed that there should be some mechanism to ensure compliance with the requirement of state law that the employee be properly evaluated, the court held that the statutory requirement under which the state board of education had issued regulations calling for periodic reviews of teachers and administrators did not create a right on the part of the principal to challenge the decision of the local board denying him career status.[5]

Principal's Refusal to Re-Admit Student Does Not Deny Constitutional Rights

A student in the District of Columbia public school system sued the principal of his high school, alleging a violation of the student's constitutional rights based on allegations that the principal improperly suspended the student and then refused to re-admit him to school. The student had been arrested at school pursuant to a warrant based on a complaint that the student, while armed, had raped another student off school grounds in a private residence. At the time of the arrest, the student was carrying a concealed weapon (a "blackjack"). After the arrest, the principal informed the student that he could not return to school until the principal met with the student's mother.

On the day following the arrest, the principal met with the student and his mother and sought to convince them that a transfer to another school or a home-study program would be appropriate for the student. A second hearing was requested with the assistant superintendent and was held within five days. A formal hearing was requested and scheduled within 10 days of the student's initial arrest. At that hearing, the hearing officer determined that the student should be readmitted to the school promptly, based on findings that the student was presumed innocent of the charge and there was no evidence that he was a danger to himself or others.

Although the hearing officer's decision was made on the date of the hearing, the written order was not issued until eight days later. In the meantime, the student attempted to returned to school the day after the hearing, and the principal refused to admit him. One day later, the superintendent directed the principal to admit the student, but the principal refused and requested a reassignment and leave of absence in the interim. The student did attend school two days after the hearing and ultimately graduated with his class. The criminal charges were later dismissed.

In responding to the claims that the principal had violated the student's rights to due process of law, the appeals court affirmed a lower court decision granting summary judgment to the principal. The court ruled that the principal did not violate the student's rights to due process in refusing to admit him following the arrest, nor were the student's procedural due process rights violated when the principal disobeyed the hearing officer's oral order by excluding the student from school for one day. Assuming that the student had an entitlement to attend school, the court reasoned that the give and take that had been part of the informal hearings with the principal and the assistant superintendent, coupled with the due process offered at the formal hearing before a hearing officer, was sufficient to meet due process requirements. Furthermore, the court found that the one-day suspension that resulted when the principal initially refused to re-admit the student to school was not substantial enough to support a procedural due process claim.[6]

Finance

The state's commitment to provide public education is found in state constitutional provisions and statutory enactments. School districts must manage the funds allocated by government in ways that achieve the purposes for which the funds were allocated. School boards and their officers are held to strict accounting for use of funds and for the realization of both constitutional and statutory mandates.

Bond issues, management of accounts, and allocations under board authority are regularly challenged by taxpayers. At another level, revenue collection and allocation systems are subject to review under provisions of state and federal constitutional standards, particularly those involving uniformity, equity, and adequacy of public education.

Choice Plan Would Violate New Hampshire Constitution

The New Hampshire senate requested an opinion on the constitutionality of legislation that would allow a parent or guardian to send a child to any state-approved school, including private or sectarian schools, and which would require the local school district to pay up to 75 percent of the tuition provided by the state for that student. The purpose of the bill was to permit parental choice in education. Inclusion of sectarian schools as recipients of the payments from the resident districts was considered to be constitutionally suspect.

The Supreme Court of New Hampshire ruled that the bill would violate state constitutional provisions which provide that "no person shall ever be compelled to pay towards the support of the schools of any sect or denomination." No safeguards existed in the legislation to prevent the application of public funds to sectarian uses, and the local district's payment would constitute an unrestricted application of public money to sectarian schools.[1]

State Fails to Fully Fund Expanded Special Education Programs

Motivated by federal legislation that offered additional federal aid to states that adopted special education services at the preschool level, the General Assembly of Missouri mandated that school districts provide special education services to handicapped preschoolers beginning at age three. The legislation set aside $3 million of school foundation program funds for the mandatory special education programs serving three and four year olds. Local school districts and taxpayers challenged both the state's use of a set-aside from the state's school foundation program to fund the preschool program and the failure of the legislature to provide specific state funding for the entire cost of the mandated programs.

The Supreme Court of Missouri found no violation of the general school funding statute in the set-aside provision. However, the court ruled that the state had failed to fully fund the mandatory handicapped program for preschoolers. Recently enacted provisions of the Missouri Constitution prohibited the state from requiring any new or expanded activities by counties and

other political subdivisions without full state financing, a provision that prohibited the state from shifting the tax burden for the program to local school districts. The law also prohibited the state from reducing the state financial proportion of the costs of any existing activity or service required of counties.[2]

School Districts May Prove State Failed to Provide Funding for Thorough Public Education

Parents, taxpayers, and school superintendents brought a consolidated action challenging the Idaho system of public funding for education on the grounds that the system failed to meet the state constitution's mandate for a uniform system of public, free, common schools and to provide thorough education.

Public schools in Idaho are funded from a variety of sources, including local levies on property. Each district's portion of financial aid is reduced by a projected local contribution equal to the money that would be collected by a .36 percent property tax levy by the school district. Because a school district with low-assessed property value will collect less money than a district with high property value under the formula, a low-property-value school district contributes less money than a high-property-value school district. The disparities in per-pupil funding created by this system, and the variation in taxing authority between school districts that are chartered as opposed to non-chartered, led to the litigation challenging the school funding system.

The Supreme Court of Idaho ruled that the provision of the state constitution requiring a uniform system of public free common schools meant uniformity in curriculum, not uniformity in funding, and held that this challenge to the school funding system had been resolved in previous litigation. However, the court found that the allegation that current funding did not provide a thorough education within the meaning of the state constitution stated a claim upon which relief could be granted. The court reasoned that if school districts could prove that they could not meet standards established by the state with the money provided under the current funding system, then the districts would present an apparent *prima facie* case that the state had not established and maintained a system of thorough education. The standards to which the court referred were contained in state board requirements for school facilities, instructional programs and textbooks, and transportation systems.[3]

State Fails to Provide "Adequate" Public Education

In a suit brought by students and taxpayers in Massachusetts, the Supreme Judicial Court of Massachusetts has ruled that the state failed to meet its constitutional obligation to provide all public school students with an "adequate" education. The state was found to have violated the constitutional requirement based on evidence that students in less affluent school districts were offered significantly fewer educational opportunities and lower educational quality than students in high-spending districts, and that less-affluent districts suffered from deficiencies such as inadequate teaching of basic subjects, neglected libraries, inability to attract and retain quality teachers, lack of teacher training, lack of curriculum development, lack of predictable funding, administrative reduction, and inadequate guidance counseling.

In defining an "adequate education" the court went on to suggest that an adequately

educated child must possess oral and written communications skills, knowledge of economic, social, and political systems, understanding of government processes, self-knowledge and knowledge of mental and physical wellness, grounding in the arts, occupational training or preparation for advanced training in either academic or vocational fields, and sufficient academic or vocational skills to enable him or her to compete favorably with counterparts in surrounding states.[4]

Inequalities in State Funding Violate State Constitution

In Tennessee, funding for public education is shared among state, federal, and local funding sources. To equalize the disparities in the funds that local districts generate through property taxes, the state has an equalization formula that accounts for differentials in assessed property values. The amount of funds available in the state budget for equalization is less than $60 million out of a state budget of $2.5 billion. Adjustments are also made for the training and experience of teachers, which results in more state funds for districts with better trained and more experienced teachers.

In a challenge to the funding system brought by local districts, the state defended the funding system on the basis that the state constitution does not provide an enforceable qualitative standard under which courts can assess the quality of education provided against the sufficiency of funding. Furthermore, the state asserted that the desirability of maintaining local control of schools outweighed any disparity that might be created in funding based on the state formula.

Two provisions of the Tennessee Constitution were interpreted in the challenge to the state's system of school funding. The state constitution required maintenance and support of a system of free public schools, and also guaranteed equal protection of the law. The Supreme Court of Tennessee ruled that these two provisions, when read together, established a fundamental right to an adequate free public education and rendered unconstitutional any system of state funding that resulted in inequalities in the provision of educational opportunities.

In reviewing the evidence, the court found that students in property-poor districts were not afforded substantially equal access to adequate laboratory facilities, computers, current and new textbooks, adequate buildings, advanced placement courses, varied curricula, advanced foreign language courses, and courses in music, art, drama, and television. These districts also fail in their efforts to retain teachers, fund needed administrators, and provide sufficient physical education and other programs. The court also reviewed the difference in number of accredited schools, number of college acceptances for graduating seniors, number of remedial programs within schools, and compliance with state minimum standards. Based on these differences, the court concluded that there was a correspondence between financial support for local districts and the amount of funding provided.[5]

State Must Assume Responsibility for Local District Mismanagement

A California school district that projected a shortfall of $23 million for the school year was denied an emergency loan from the state, and announced that schools within the district would close for the last six weeks of the school year. Parents filed a class action suit seeking an injunction to prevent the closing based on provisions of

the state constitution guaranteeing the right to an education and on the Fourteenth Amendment provision of equal protection of the law. A lower court judge issued an order granting the injunction and requiring the state to provide the funds necessary to operate the schools for the remainder of the school year. The judicial order also suspended the authority of the local school board and allowed the state superintendent to appoint a temporary administrator to oversee the remainder of the school year.

When the state appealed to the California Supreme Court, the court affirmed that the state has the ultimate obligation to ensure that students throughout the state receive fundamentally equal education. The court reasoned that education is a fundamental right under the state constitution, and concluded that the state had an obligation to ensure that the students of the school district receive a basic education equivalent to students in other districts of the state. Despite the evidence of mismanagement by the local district, the court held that students of the district should not be compelled to absorb the consequences of that mismanagement. The court agreed that the solution was to grant the state superintendent emergency management authority over the district, but concluded that the lower court's decree requiring that funds earmarked by the legislature for other purposes must be diverted to the local district was improper. While the lower court could order the state to provide funds, it could not order monies earmarked for other purposes to be allocated to the local district, as this would usurp the state legislature's constitutional authority to allocate funds.[6]

Teachers and Other District Employees

As public employees, teachers and other school employees enjoy constitutional and statutory protections relative to their jobs. Rights to free speech and association, due process of law, and equal protection of the law have traditionally received the greatest judicial scrutiny in cases involving adverse employment decisions affecting these employees. Statutory protections include federal anti-discrimination provisions and state statutes ensuring due process, creating tenure or continuing contract, requiring good cause for dismissal, and establishing standards and procedures for evaluation, selection, and corrective discipline.

Board Must Provide Notice if It Intends to Prohibit Teacher's Classroom Speech

A non-tenured teacher in Massachusetts who led a discussion concerning the abortion of Down's Syndrome fetuses in her ninth-grade biology class was not renewed when the board of education split 3-3 on whether to extend her annual contract, which would have effectively awarded her tenure. Apparently, a board member had been informed by a parent of the class discussion, and introduced the matter during the board's deliberation on contract renewal. The teacher sued, alleging that the board members who voted against her were retaliating against her for her exercise of First Amendment rights to freedom of speech.

The First Circuit Court of Appeals noted that, because this was a non-tenured teacher, the board could have refused to rehire her without any reason at all. However, if the board denied renewal in retaliation for the teacher's exercise of free speech, then the nonrenewal decision was constitutionally impermissible. The court found that a school board is permitted to limit the classroom speech of teachers in order to promote educational goals, if the regulation is reasonably related to legitimate pedagogical concerns and the school has provided the teacher with notice of what conduct is prohibited. A teacher's statements in class during an instructional period are part of the curriculum and a regular class activity. However, the court stated that a school board is *not* entitled to retaliate against speech that it never prohibited. (The court also noted that the board need not expressly prohibit every imaginable inappropriate conduct by teachers, since this would be an impossible burden.)

Despite this interpretation requiring notice of that speech which is prohibited on the basis of pedagogical concerns, the court declined to give judgment to the teacher, citing the failure of the teacher's counsel to request a jury interrogatory on the issue during the trial. Having failed to request this interrogatory, the appeals court held that the teacher had effectively waived her right to that determination.[1]

Prohibition on Teacher Participation in Political Activities Is Unconstitutionally Vague and Overbroad

Kentucky teachers who were active in political campaigns for the school boards in the districts in which they taught and in which they re-

sided challenged the provisions of state statutes that effectively prohibited them from engaging in political activities. The state statutes prohibited employees of local school districts from taking part in the management or activities of any political campaign for school board and forbade candidates for local school board offices to solicit or accept services or contributions from any school district employee. The state argued that the laws were narrowly drawn to serve the purpose of the state constitution's mandate for an efficient system of common schools free from political influence.

The Supreme Court of Kentucky ruled that the state statutes were unconstitutionally vague, since people of common intelligence might necessarily guess at the law's meaning, and overbroad, since the statute prohibits conduct that is constitutionally protected. The law's prohibition on taking part in "activities" of political campaigns for school board was also found to be vague and overbroad, since it was difficult to determine what conduct was impermissible and the application of the law might limit constitutionally protected free speech and association rights. However, the provision prohibiting school employees from taking part in the "management" of any political campaign was not unconstitutionally vague, according to the court, nor was the provision prohibiting school board members from soliciting or accepting political contributions from school employees.[2]

Teacher's Statements in Newsletter Are Not Constitutionally Protected Free Speech

A tenured physical education teacher who was president of a faculty association in a Pennsylvania school lost her position as a coach after she made statements in a faculty association newsletter that incorporated veiled criticisms of school administrators for the low morale of teachers and encouraged teachers experiencing undue stress or low esteem to contact association members. The teacher had received unsatisfactory ratings as a coach in the two years prior to the newsletter.

The Third Circuit Court affirmed a lower court's dismissal of the teacher's action on the grounds that she failed to state a claim. The appeals court held that the statements that appeared in the faculty newsletter were not matters of "public concern" and thus were not protected free speech under the First Amendment. In reaching this conclusion, the court noted that the teacher's statements related primarily to employee morale rather than a policy issue. The newsletter, reasoned the court, conveyed little information other than that some faculty members were "being put under stress," had experienced "bad luck," and had left the building with "low esteem." Further, the context of the speech did not relate to matters of public concern, since the newsletter itself was primarily oriented to mundane topics such as faculty lunch menus, employee of the month award, and "April showers bingo." Nor did the newsletter "speech" implicate free association rights to any significant degree.[3]

Letter Urging "Sick-Out" Promotes Violation of Law and Implicates Substantial Disruption

A South Carolina public school teacher was discharged from employment after he wrote and circulated a letter to fellow teachers, complaining about a change that had been made in the method for paying teachers, criticizing the school district for budgetary mismanagement, and encouraging

his fellow teachers to engage in a "sick-out" during the week of final examinations. The teacher had been employed for 10 years in the district, and wrote the letter in response to a new policy by the board which established that summer employment wages would be based on biweekly payments rather than the customary lump sum.

In evaluating the teacher's claim of a violation of free speech, the federal appeals court affirmed a district court's decision in favor of the school district. The court found that the teacher's allegations of budget mismanagement arguably related to a matter of public concern. While the teacher's personal grievance prompted the letter, and the substance of the letter was in large part limited to this grievance, the teacher's complaints of school officials' mismanagement might reasonably fall within the area of constitutionally protected speech. However, even assuming that the speech was protected, the court concluded that any First Amendment interest inherent in the letter was outweighed by the interests of the public and the school district as employer. The court reasoned that the teacher's advocacy of a "sick-out" that would disrupt final examinations urged deliberate violation of regulations and employment terms, and justified the district's decision to dismiss him.[4]

Stigma of Unfavorable Report on Coach's Conduct Justifies a Hearing

A Georgia football coach was reassigned to a teaching position after an investigation of allegations that he had changed a student's grades in order to enable the student to retain his football eligibility. The allegations of misconduct arose at a school board meeting in which a report of an investigative agency was presented to the board. Allegations in the report included false statements impugning the coach's honesty. Although Georgia law did not grant the coach a property right in the continuance of his coaching contract, the coach contended that the failure to grant him a hearing at which to clear his name had effectively denied him due process of law under the Fourteenth Amendment.

A federal appeals court reversed the portion of the lower court's decision that had found for the school district, and held that the release of the report at the board meeting deprived the coach of his liberty interest in his reputation without due process of law. The fact that the coach had been retained in a position as teacher did not, in the court's view, minimize the stigma attached to the release of the report, particularly in view of the fact that the board did not offer a name-clearing hearing after the coach was relieved of his coaching duties. While damage to reputation alone might not be sufficient to require a hearing to clear one's name, the loss of the coaching position, even if regarded as an at-will appointment, was significant enough to implicate a liberty interest.[5]

Denial of Continuance in Late-Night Hearing Is Justified

A tenured Missouri teacher was served with a statement of charges listing more that 150 instances involving insubordination, persistent violation of board policy, and immoral conduct. The teacher requested and received an initial postponement of a termination hearing, and was represented by counsel in the rescheduled hearing, which began at 7 p.m. with the presentation of the district's case for termination. At 2:15 a.m., following the direct examination of the school principal, the teacher's counsel requested a continuance due to the late hour. The board attorney

suggested that the hearing continue until finished, given the pending board elections and the fact that, if some new members were added to the board, testimony would have to be presented again. The board continued the hearing, but the teacher and his counsel left. The hearing concluded at 5:48 a.m., and the teacher was subsequently offered an opportunity to submit affidavits from witnesses, but declined. At a later meeting, the board voted to discharge the teacher.

The Missouri Supreme Court ruled that the school board did not violate the teacher's due process rights in its decision to refuse a continuance. The court considered whether the refusal of the continuance was an abuse of the discretion of the board. No abuse was found. The court reasoned that the timing of the request for continuance came after direct examination and before cross examination of the principal, and denial of a continuance at that time was reasonable. Furthermore, the lateness of the hour was insufficient in itself to demonstrate a violation of due process. It would be necessary for the teacher to show that the effect of the late hour would prevent effective participation of those involved in the hearing, such as a showing that the late hour might negatively affect the clarity and specificity of the testimony being given.

The teacher's decision to abandon the hearing prior to the point at which he and his counsel would have been required to go forward with his own case deprived the state court of the opportunity to determine whether the board might have granted a continuance at that time. The court stated that it had little doubt that the teacher's right to a full and fair hearing might well have been compromised if the school board had required the teacher to go forward with his case at this later point.[6]

Certified Teacher Does Not Have an Entitlement to Vacant Leadership Positions

A Massachusetts teacher sued the school district after repeated instances in which he had applied for, but had not been selected for, administrative positions in the local district. The teacher had applied for department head positions and other positions for which he held state certification. In some cases, other candidates had been selected who lacked appropriate certification credentials. After reviewing the claims, a federal district court ruled favorably on the district's motion to dismiss the case. The teacher appealed.

The First Circuit Court of Appeals affirmed that the teacher failed to establish that he had a property interest in promotion to the positions, and thus he did not state a claim upon which relief could be granted. Even though state law might require that to be eligible for a position the individual must be certified, that alone would not give rise to a constitutionally protected property interest in a position. A property interest must be based on a legitimate claim of entitlement rather than a unilateral expectation, but the general directive of the state law could not be read to confer an entitlement on a particular applicant.[7]

Subjective Teacher Selection Process Is a Pretext for Racial Discrimination

A black male applicant for a position as a mathematics teacher in an Alabama school district challenged the school district's decision to hire a white female applicant with no prior experience. The black applicant had 10 years of teaching experience, a more advanced degree in mathematics, and was equivalent to the white candidate in college transcripts.

The district defended its selection decision on the basis of a statement from a principal who had previously employed the black applicant. According to the statements of a member of the selection committee, the principal had indicated in a telephone conversation that the candidate had problems communicating both orally and in written form and that, based on a rating of "inadequate" in certain areas, he would not reemploy the applicant.

The federal district court held that the alleged "unfavorable recommendation" received by the board from a school principal with whom the black applicant had previously worked was not a "legitimate non-discriminatory reason" for failing to hire the candidate. The district policy manual stated that "subjective evaluation shall be based upon a personal interview and information obtained in individual written references." No documentation of inadequacies of the black candidate was found in these sources. Thus, the only information that led to a negative evaluation of past performance were the statements made by the past employer. This information could have been verified through a thoughtfully conducted employment interview, but neither of the school officials who talked to the candidate could remember anything about the interview. Further, the school officials presented no evidence that the white candidate selected for the position was a superior candidate. In fact, the objective evidence was to the contrary.[8]

Subtle Learning Disabilities Would Not Excuse Requirement for Effective Communication Skills

A Virginia probationary teacher who taught special education classes under a one-year appointment and a temporary certificate was required to pass the National Teacher Examination (NTE) as a condition of future employment. The examination was required for certification under state law, and had been validated in the interim before it became state law.

Although the teacher passed the general knowledge and professional knowledge tests of the NTE, she failed the communications skills test — which consisted of listening, reading, and writing — eight times. The teacher contended that a subtle learning disability prevented her from passing this part of the NTE, and her physician stated in a one-sentence letter that his patient suffered from test anxiety and should be exempted from the examination component. The applicant requested a reader and unlimited response time to complete the communications skill section.

The testing agency granted the teacher an increase in time for response, a script of a tape used in the listening skills section of the test, and a private room in which to take the test. Despite the arrangements, the teacher failed the communications skills test on two more occasions. She then sued the state of Virginia, alleging a violation of the Rehabilitation Act of 1978.

The federal district court noted that a plaintiff has the initial burden to establish the existence of an impairment, and that once reasonable accommodations have been shown to have been made, the plaintiff must prove that the accommodations were not reasonable. In this case, the court found that the teacher had not established the existence of an impairment that substantially limited a major life activity as required by the law. In making the holding, the court noted that no evidence of a learning disability had been established, and the teacher's psychologist had pieced together various hybrid categories of mental illness to create a disorder. Furthermore,

since the law was not intended to eliminate academic requirements or to require substantial modifications of professional requirements, the teacher failed to establish that the accommodations made in the testing procedures were not reasonable accommodations directly responsive to the difficulties the teacher claimed as disabilities.

In the court's own words, "Those who fail objective examinations that effectively measure qualifications that are reasonably related to the skills necessary to perform professional tasks with competence should not be allowed to skirt the requirements for licensure with the unfounded excuse that their failure resulted from a learning disability."[9]

District Is Not Required to Accommodate Interpreter's Religious Beliefs

A Missouri sign language interpreter and tutor at a public high school found cursing objectionable and refused to interpret any phrases she found profane. Because of her religious beliefs, the interpreter refused to agree to a contract which incorporated national guidelines that required interpreters to refrain from editing messages and to interpret messages with the literal intent intact. Although the interpreter objected to vulgar or inappropriate language, she would not specifically identify the words that she refused to translate.

The interpreter requested reassignment to an elementary school because she believed that there would be less likelihood of a conflict between her duties and her religious beliefs at this level. However, the district refused the reassignment because the interpreter's 22 years of experience in the field made her skill level most appropriate for the high school level. Because she refused to work at the high school level, she was terminated. After termination, she filed a complaint with the Missouri Commission on Human Rights. The commission concluded that the district failed to accommodate the interpreter's religious beliefs by refusing to reassign her to the elementary level.

However, a state appeals court ruled that, although the interpreter's religious beliefs were sincerely held, the school district was not required to accommodate her by agreeing to the requested transfer. The court found that the guidelines adopted by the district were reasonable and within the scope of the district's authority. Reassigning interpreters in a manner that would underutilize the skills of some interpreters while overtaxing others was unreasonable. Similarly, it would be unreasonable to allow the interpreter to absent herself from classes whenever she might encounter objectionable language, particularly since the interpreter could not "reasonably define what words were included on her personal taboo list." The inability of the district to alter the interpreter program and provide the requested accommodation without undue hardship led the court to conclude that the district's action terminating the employee was warranted.[10]

Logbooks Establishing Principal's Intent in Teacher Dismissal Are Admissable as Evidence

An Ohio teacher brought an action alleging sex discrimination in the decision not to renew her contract. The school district contended that the decision not to renew was based on the teacher's poor performance. During the course of a trial, the court admitted the logbooks of the school principal, which allegedly contained records of parental complaints registered against the teacher. During the principal's testimony, the

court permitted him to refer to the logbooks to refresh his recollection of events. Finally, the court allowed six parents who had lodged complaints against the teacher with the principal to testify to the fact that they had indeed made the complaints. The teacher's attorney challenged the introduction of this evidence, arguing that it was hearsay evidence. Hearsay is a statement other than one made by the declarant while testifying at trial or hearing, offered as evidence to prove the truth of the matter asserted.

The federal district court ruled that the grounds under which the logbooks were admitted as evidence did not constitute hearsay. In this instance, the information was not intended to prove that the complaints against the teacher were true; rather, the information was used to establish that gender was not a motivating factor in the principal's decision not to renew the teacher's contract. The evidence was sufficient to convince a jury that the decision not to renew was not motivated by a discriminatory intent.[11]

Teacher's Supervision of Classroom Newspaper Leads to Discharge for Immorality

A Missouri teacher who taught English and media classes at the high school was terminated for immorality after he supervised the publication of a journalism class project that achieved a general circulation in the school and community. The class newspaper contained articles and advertisements that used explicit, crude, and tasteless sexual references, articles that condoned the use of drugs, and articles accusing the local community police of using drugs. The teacher critiqued the material to the class, indicating that some of the material was unacceptable, but he did not retrieve all copies of the publication after the class. When the publication was brought to the attention of the district superintendent, he suspended the teacher and served him with a notice of charges. The board later terminated the teacher's contract after a hearing.

On appeal, a state court reviewed the decision of the board, limiting review to whether the board's decision was supported by competent, substantial evidence. The basis for termination, immorality, means "immoral conduct rendering the teacher unfit to teach" under applicable state law. The board found that some of the articles in the classroom newspaper had the effect of condoning and encouraging student drug use and sexual conduct, thus undermining discipline in the schools, student morals, and respect for authority. The testimony of an expert witness established that students in the school setting would regard the teacher's writing, typing, and distribution of the newspaper as tacit approval of the content of the articles. Based on the contents of the newsletter and the testimony of the expert witness, the court found that there was substantial evidence to justify the termination decision.[12]

Conviction of a Criminal Offense Is Not Sufficient to Substantiate Revocation of Teaching Certificate

A Florida teacher was arrested and charged with crimes involving sexual misconduct with a minor. The teacher entered a plea of *nolo contendere* (which effectively means that the defendant does not contest the charge) to the offense of attempted commission of a lewd or lascivious act in the presence of a child. Pursuant to this plea, a trial court adjudicated him guilty of the charge and placed him on three years probation.

The state then filed an administrative complaint with the Florida Education Practices Com-

mission (EPC), seeking disciplinary sanctions based on misconduct that constituted gross immorality or an act of moral turpitude under Florida law. A copy of the adjudication of guilt in the criminal prosecution was filed with a state administrative hearing officer, who granted a motion to remand the case to the EPC for an informal hearing at which the teacher could present mitigating evidence to reduce or eliminate the penalty. The hearing officer ruled that the finding of guilt in the criminal prosecution was a sufficient basis for discipline.

The teacher challenged the EPC's decision, contending that he was entitled to a formal hearing because there were disputed issues of material fact. He stated that the plea in the criminal prosecution resulted from threats and coercion.

A state appeals court ruled that the judgment of conviction of a criminal offense was not legally sufficient in a subsequent civil proceeding as proof of the teacher's misconduct. As a consequence, the teacher was entitled to a formal hearing in the proceeding to revoke his teaching certificate. Because the copy of the criminal conviction was not sufficient, and the teacher disputed issues of material fact, he was entitled to a formal hearing before a state administrative hearing officer, and the court so ordered.[13]

Evaluation System Is Sufficient to Support Teacher's Nonrenewal

An Ohio teacher sought judicial review of a school board's decision not to renew his employment contract. The teacher challenged the board's decision on several grounds, among them that school officials did not properly evaluate him and that the evaluations failed to address remediation to overcome deficiencies. The first challenge involved the teacher's allegation that he did not, in one isolated instance, understand what his principal meant when the principal advised him to increase his "student participation." In the second challenge, the teacher contended that the evaluations failed to address the means by which the teacher could obtain assistance.

A state appeals court affirmed summary judgment for the school board, finding that the record provided ample evidence that the board had complied with evaluation requirements. Written evaluations had established that an atmosphere of fear characterized the teacher's classroom and limited his students' learning. The court was convinced that these evaluations were sufficiently specific to alert a reasonable person to the need for change. The record also demonstrated that attempts were made by school district personnel to help the teacher modify his teaching style. The school principal recommended that the teacher participate in a two-day workshop at the school's expense, suggested visiting other classrooms, and advised the teacher of certain activities to promote student participation. The teacher never attended the workshop, and generally refused to follow the suggestions.

The court found that a single isolated instance in which the principal might not have clarified the nature of a deficiency was not critical. What was essential was that school officials supply a written report of the results of evaluation that included specific recommendations regarding improvements needed in the performance of the teacher.[14]

Teacher Is Entitled to a Probationary Period Before Nonrenewal for Unsatisfactory Performance

An Idaho teacher on annual contract had taught for two years in the district prior to the

start of her third one-year contract in 1988. In August of that year, the teacher underwent back surgery and was unable to return to teaching until March of 1989. In the 10 weeks remaining in that school year, the teacher was observed and evaluated three times by her principal, who did not recommend her renewal because of her poor relationship with students, staff, and parents, her lack of enthusiasm, and deficiencies in her overall performance. The teacher was not offered a probationary period in which to correct the perceived deficiencies.

The teacher challenged the nonrenewal decision on the grounds that state law stipulated that a school district that elects not to renew a teacher's contract on the basis of unsatisfactory performance must first place that teacher on probation.

The Supreme Court of Idaho affirmed a lower court summary judgment in favor of the teacher, and held that written notices from the teacher's principal and the superintendent established that the teacher was not renewed because school officials found her work to be unsatisfactory. Thus, she was entitled to a reasonable period of probation before the school district took action not to renew. The court declined to determine what a reasonable period of probation would be.[15]

Ratings Sheets Used in Teacher Evaluation Corroborate Nonrenewal Decision

An annual contract teacher in a Pennsylvania school district was not renewed at the conclusion of her second year of teaching within the district. In her first year, she had received satisfactory ratings of performance, but in her second year she received a satisfactory rating for her first semester, qualified with comments on areas that needed improvement, and an unsatisfactory rating for her second semester. Had she been rated satisfactory, she would have been entitled to tenure. The teacher was allowed a full hearing to contest her unsatisfactory rating. Testimony from the principal and another supervisor was included in the record of that hearing, and the board upheld the rating and the adverse employment decision.

On review, the state appeals court ruled that the teacher was not denied due process in the hearing procedure. Anecdotal records supporting the unsatisfactory evaluation were not incorporated in the hearing record, although the principal testified about the anecdotal information, and the rating sheets used to evaluate the teacher were incorporated in the record. These records and testimony demonstrated that the ratings were reasoned judgments about the teacher's performance and that the fact that anecdotal records were not part of the hearing record did not impair the validity of the ratings. The court noted that the anecdotal records were a part of the teacher's personnel file, thus meeting the school district's statutory obligation to provide notice to the teacher of the basis for the evaluation.[16]

Teacher's Showing of "R" Rated Films Was Ill-Advised, But Not Incompetent

A Louisiana teacher with 14 years of service and several years as head of the high school social studies department was dismissed for incompetence after parental complaints and a board hearing established that he had shown two R-rated films to his high school classes. The films, "Quest for Fire" and "Witchboard," contained nudity, vulgarity, violence, and explicit sexual scenes. The teacher justified the showing of the

films because they were relevant to the topics of ancient Chinese culture and the negative consequences of the occult, respectively. After the dismissal hearing, the teacher sought judicial review.

The state appeals court found that the teacher's dismissal for incompetence was inappropriate. Although the court regarded the teacher's conduct as ill-advised, there were no other instances that would suggest that the teacher's performance was incompetent as a whole. The board failed to present additional evidence, or to demonstrate that the showing of the films was anything more than an isolated incident of poor judgment. The court was left with the opinion that dismissal was an overly harsh remedy given the teacher's overall unblemished record.[17]

Evidence of Teacher's Use of Force in Previous Situations Could Be Included in Discharge Hearing

A Washington state physical education teacher with 10 years of service in the district was dismissed following an incident in which he used physical force on a 10-year-old student. The teacher, who owned a grocery store, had seen the student in his store the previous day and had suspected her of shoplifting. Later, when the teacher observed the student walking across school grounds with two other students, the teacher grabbed the student by the shoulder. When she pulled away, her coat came off in the teacher's hands. The teacher then put both hands on the student's shoulders and attempted to force her to go with him. The student struggled, started to cry, and then broke away from the teacher and went to principal's office to report the incident.

The principal testified that the student was crying hysterically when she entered his office. He asked the teacher what had happened, and the teacher explained the circumstances. The principal admonished the teacher about keeping his store business separate from his teaching duties, but the teacher simply replied, "You know me ... I know the rules, but sometimes I cross the line."

After receiving a report of the incident, the district superintendent determined that probable cause existed to discharge the teacher. The reasons supporting the discharge included the incident of non-consensual touching and assaultive behavior without justification. At the hearing before the board, other incidents of a similar nature were introduced concerning this teacher's behavior in previous years. Although investigated, the previous incidents had not resulted in discipline of the teacher, and the teacher sought to have this evidence removed.

A state appeals court ruled that the school district was not precluded from using evidence of previous instances of misconduct on the part of the teacher in the hearing which led to his discharge. In previous cases, teachers had been discharged based, in part, on the aggregate effect of prior misconduct for which the teacher had been reprimanded or suspended. This case was distinguishable because the prior allegations of misconduct had not resulted in formal discipline, although written directives and oral reprimands had accompanied the prior incidents. However, the court's view was that, simply because the prior instances had not resulted in discipline, this did not mean the teacher had done nothing wrong.

The teacher's record made it clear that he was fully aware of the district's view regarding the use of force and that there were complaints about his handling of such instances. Even though the teacher received satisfactory evaluations of performance, this would not have been

enough to convince a reasonable person that his handling of student discipline was acceptable, since the principal and superintendent had repeatedly brought discipline matters to his attention and advised him that his conduct was unacceptable and would result in his termination if continued.[18]

Academic Freedom Is an Educational Policy Issue Where Directive Involved Rescinding Homework Assignment

A New York teacher was subject to a three-month suspension without pay when she refused to turn over lesson plans and grade books to school officials. The teacher had given her students an assignment that involved writing an essay expressing their opinions regarding the recent firing of a television sports commentator. School officials did not view the assignment as improper, but felt that the teacher had acted improperly when she included in the material distributed to students a letter to the editor she had written which expressed her opinion on the subject of the essay.

In reviewing the opinion of the commissioner of education, the state appeals court found that the punishment of a three-month suspension was not disproportionate to the offense involved, that of refusing to turn over lesson plans and grade books as requested by the superintendent of schools. Furthermore, the court concluded that the commissioner of education was not restricted in defining the boundaries of an academic freedom privilege as a court might be. The commissioner may logically incorporate elements of educational policy in formulating a decision.

The teacher prevailed, however, on a claim that school officials had violated her academic freedom by directing that she rescind the assignment to students in her class. The court agreed with the commissioner's reasoning that the district's directives which attempted to interfere with the teacher's right to give a homework assignment would constitute an unreasonable intrusion into the teacher's academic freedom.[19]

Continuing Disagreement Does Not Constitute Gross Insubordination

The head school custodian in a Florida elementary school was dismissed for gross insubordination after instances in which he was disrespectful to the principal and attempted to create friction between the principal and other school staff. Although employed for eight years in the school, the custodian had taken issue with the principal over the principal's decision not to renew an employee under the custodian's supervision. The custodian vehemently opposed the principal's decision in this personnel matter.

The Florida appeals court overturned the dismissal, ruling that the head custodian's strong and continuing disagreement with the principal did not constitute gross insubordination under state law. Under state law, "gross insubordination" is defined as constant or continuing intentional refusals to obey a direct order, reasonable in nature, and given by and with proper authority. In this situation, the principal never gave the custodian a direct order concerning his contentious and uncooperative conduct. The court reasoned that if the principal had presented the employee with a letter warning him and ordering him to cease the disruptive behavior, continued disruptive behavior could have been documented to sustain a charge of gross insubordination.[20]

Refusing to Follow Principal's Reasonable Directives Justifies Dismissal for Insubordination

A North Carolina seventh-grade teacher implemented a doll-making project in her social studies classes, but was directed by the principal to discontinue the project. The principal felt the project had no educational value and took up too much class time, and instructed the curriculum specialist for social studies to evaluate the project. The specialist agreed with the principal's position, and the principal thereafter advised the teacher to discontinue the project. Several weeks later, however, the principal discovered that students were still engaged in the project.

The teacher was placed on conditional status and was required to work with the principal to develop a professional development plan, but she failed to meet with the principal in spite of several invitations to do so. Eventually, the principal developed a plan without the teacher's input and directed the teacher to implement it. The plan was revised once, extending the time for completion, but the teacher never implemented the plan. Finally, the teacher was recommended for dismissal on the grounds of inadequate performance, insubordination, and neglect of duty.

Upon the teacher's challenge, a state appeals court ruled that the decision to dismiss the teacher was justified on the basis of insubordination. Insubordination was established by evidence that the teacher continued the doll-making project after being directed to stop, that she failed to develop and implement the required professional development plan after being placed on conditional status, and that she refused to implement the growth plan that was constructed for her.[21]

Single Disrespectful Utterance Would Not Justify Dismissal for Insubordination

A Nebraska assistant cook for a public school district had been employed for eight years when she was dismissed by her local school principal. The situation began when she was summoned to the principal's office to discuss an instance in which her son, an eighth grader at the same school, had been disciplined. On leaving the office, she was overheard by the principal's secretary to mutter the words "dumb bastard" under her breath. The secretary informed the principal of the comment, and the principal fired the employee that afternoon. The assistant cook challenged the dismissal, asserting that it was unjustified and breached her employment contract.

In an appeal to the Nebraska Supreme Court, the school board asserted that dismissal was justified as a response to the employee's insubordinate behavior. The court disagreed, and affirmed a lower court decision for the employee, noting that there was no record of previous unsatisfactory performance and reasoning that insubordination requires a willful refusal by an employee of an employer's reasonable directive. The assistant cook had not refused to comply with any work-related order, since her dismissal stemmed from an incident unrelated to her work as a school cook.[22]

School Board Has Authority to Require a Second Opinion on Teacher's Fitness

In December of 1988, a tenured Iowa teacher of driver's education began an indefinite, voluntary sick leave, using accrued sick leave to stay on the payroll of the local district. The sick leave was taken as a result of several instances in

which the teacher had engaged in aberrant behavior at school, including shouting at students.

After one month, the school district advised the teacher that before he could return to work he must submit to a second medical evaluation and opinion, other than that of his treating psychiatrist. This condition was based on the district's concern for students who might be enrolled in the teacher's classes. After his psychiatrist certified that he was ready to return to work, the teacher sought to return to work in the 1989-90 year. He did not submit to the second opinion requested by the school district, and was not permitted to assume classroom duties. The teacher alleged that his due process was denied when the district refused to allow him to return to work.

The Eighth Circuit Court of Appeals affirmed a lower court ruling that the school district was entitled to require the teacher to obtain a second medical opinion of fitness before returning to work, and did not need to give notice and conduct a hearing before imposing this requirement. The requirement did not violate the teacher's property interest in continued employment.[23]

Evidence of Teacher's On-Going Mental Illness Justifies Termination

An Iowa fourth-grade teacher was arrested for stealing some clothing from a department store. At the time of the arrest, the teacher admitted to other episodes of shoplifting. Following this incident, the superintendent of the local school district notified the teacher that he had recommended termination based on the arrest for shoplifting, the notoriety attendant to the arrest, and evidence of a course of similar conduct by the teacher. The teacher defended against the charge that her conduct rendered her unable to serve as an appropriate role model for students by admitting the shoplifting incident, but explaining that she had no recollection of the acts involved and had committed them in a state of mania induced by drugs which had been prescribed by her psychiatrist.

At the school board hearing, testimony by a an expert revealed that even during a manic episode, the teacher would have been aware of what she was doing and the illegality of the behavior. Evidence was presented that prior to the shoplifting charge the teacher had made classroom comments that she carried a gun, made inappropriate references to Jesus Christ, took pills in front of students, lay her head on the desk due to a headache, and stated that she felt like jumping out the window when she had a headache. The combination of evidence and testimony from several different parents and school staff led the school board to conclude that the teacher could no longer adequately serve as a role model for her students.

On appeal, the Supreme Court of Iowa examined the record to ascertain whether the board had considered the duties required by the contract, the character and possible duration of the illness, the needs of the employer, and the extent to which the duties can be performed by another in assessing the basis for termination. The court concluded that the board had met its obligation in a comprehensive, detailed, and reasonable manner. The teacher's contract, particularly at the elementary level, required both the ability to transmit curricular content and the ability to model behavior suitable for emulation by students. The teacher's illness was ongoing, and her own physician did not know whether her current treatment course would be effective in controlling future manic episodes. Testimony had also established that her position as a role model was permanently impaired due to the widespread knowledge of her actions and the small size of the

community in which she taught. The board decision was upheld on the basis that substantial evidence to justify termination had been elicited.[24]

Local Board Can "Freeze" Certain Positions in Lay-Off Policy

A continuing contract physical education teacher in Virginia was selected for lay-off in a reduction in force. The teacher challenged the lay-off, contending that the school board should have laid off annual contract teachers before selecting continuing contract teachers. The board countered that its reduction-in-force policy permitted consideration of several factors in the selection of employees, among them "job performance, the specific needs of the district, and seniority." In this instance, teachers were evaluated on the basis of a "RIF score" derived from totaling points awarded for job performance and seniority. The revised policy also allowed the board to freeze (not to lay off) certain teachers performing extra duties, including yearbook and newspaper sponsors, band directors, and head coaches. The board reduced the number of physical education teachers from 36 to 29, and four annual contract teachers were not laid off because they held "frozen" positions. The continuing contract teacher had a higher RIF score that the four teachers retained.

The Supreme Court of Virginia ruled that the school board need not give continuing contract teachers priority over annual contract teachers in implementing a reduction in force, and that the board's policy was justified under provisions of state law. Freezing, as adopted by the board in connection with the reduction in force, was a permissible policy when undertaken in the school's best interest. The language of state law makes it clear that school boards have the discretion to implement reduction-in-force policy without giving priority to continuing contract teachers over probationary or annual contract employees.[25]

Pupils

The student's legal rights extend to constitutional and statutory guarantees related to free speech and association, privacy, and due process of law. However, judges typically balance the interests of the state in maintaining the efficient operation of schools against the individual rights asserted by the pupil or parent. As the following cases illustrate, the authority of school boards and school officials in the exercise of control over students and the curriculum is judicially recognized. Courts have granted a generous measure of discretion, particularly where school officials articulate legitimate concerns for the physical health and safety of students or emphasize pedagogical concerns in rationalizing policy and practice.

Buttons Supporting Striking Teachers Are Within Students' Free Speech Rights

Two high school students in an Oregon school district were subject to suspension for wearing buttons in support of a local teachers' strike. The two students were the sons of striking teachers, and wore buttons and stickers to school that included the messages "I'm not listening, scab" and "Do scabs bleed?" The students distributed similar buttons to classmates. The school principal asked both boys to remove the buttons on the grounds that the buttons were disruptive. Believing that the buttons were a lawful exercise of free speech, the two students refused to remove the buttons and were suspended for the remainder of the school day for willful disobedience.

Three days later, the boys returned to school wearing buttons that read "Scab, we will never forget," "We want our real teachers back," and "Students united for Fair Settlement." The school administrator told the two students to remove the buttons containing the word "scab" because it was disruptive. The students, anticipating further disciplinary action, complied with the request, but sought declaratory and injunctive relief based on a denial of free expression under the First Amendment.

In considering the decision of a federal district court that dismissed the students' claim, the Ninth Circuit Court of Appeals reversed the lower court and held that the buttons worn by the students were not inherently disruptive for purposes of First Amendment free speech analysis. The court also concluded that the buttons containing the word "scab" were not, per se, vulgar, lewd, obscene, or plainly offensive for purposes of restricting the students' rights in the school setting, nor could the buttons be construed as containing the endorsement of the school for purposes of restricting student expression. No evidence of school disruption was introduced by school officials to justify the limitation on the students' symbolic exercise of free speech. The court compared the case with that of *Tinker v. Des Moines Independent School District,*[1] in which students enjoyed a constitutionally protected right to wear armbands in protest of the Vietnam War absent evidence from school officials that the symbolic protest either substantially disrupted or materially interfered with the operation of the school.[2]

Absent Substantial Disruption, High School Officials Cannot Prohibit Distribution of Religious Materials

Students attending a Texas public high school began distribution of religious tracts to students as they got off school buses, and conducted meetings at which they used a bullhorn to attract crowds of students to the front of the school cafeteria. School officials prohibited these students from distributing materials on campus and broke up the large gatherings in front of the school cafeteria, maintaining that these activities did not end when class bells began and interfered with students going to class. The students filed suit alleging that the school's response to their activities violated their rights to free speech and association, free exercise of religion, and rights guaranteed by the federal Equal Access Act.

The federal district court reasoned that the right to free expression can be limited when school officials can show a material and substantial disruption of the school's activities. The court ruled that the district failed to demonstrate that the distribution of religious materials interfered with school operations, and granted a motion for summary judgment to the students on that claim.

However, the court concluded that there was ample evidence to raise a question of material fact as to whether the cafeteria meetings caused a substantial disruption of school activities. Additional fact-finding through an evidentiary proceeding was required to determine whether this disruption justified prohibiting the meetings.

The court also held that the Equal Access Act did not apply to the distribution of materials, because the distribution did not constitute a meeting within the meaning of the Act's provisions guaranteeing student religious groups the right to meet outside of class time when the school maintains a limited open forum for other student-initiated extracurricular groups to meet.[3]

Federal Court Sustains Junior High School's "Closed Forum" Policy

A local Illinois school district sought to establish a restrictive policy that prohibited junior high school students from distributing materials developed by non-students on school grounds and specifically restricted religious materials from the school grounds. This "closed forum" policy was meant to correct flaws in previous school district policy that had been challenged as a violation of student free speech rights.

Students challenged the closed forum policy, and specifically challenged sections of the policy which provided that a distribution table supervised by students could be set up at the entrance to the school during selected hours, but prohibited students from distributing material "which expresses religious beliefs or points of view that students would reasonably believe to be sponsored, endorsed or given the official imprimatur by the school."

The federal district court concluded that the school district had established a closed forum for purposes of constitutional analysis. In so doing, the court held that policies which permitted limited time, place, and manner restrictions on the distribution of non-school materials by students were unreasonable, because the restrictions actually caused the school to run afoul of the closed forum policy. The court held these restrictions invalid, but affirmed the closed forum as a means by which the school could meet its obligation to avoid a violation of the establishment clause.[4]

Videotape of Student Singing Religious Song Can Be Prohibited

A Michigan elementary school student and her mother challenged a decision by school officials that prohibited the student from playing a videotape of herself singing a proselytizing religious song during a show-and-tell program in the student's second-grade class. The child's teacher had instituted a program to recognize one child as a "VIP" each week. In that week, the student could bring special belongings to school to present to the class. The student's videotape was previewed by the teacher and principal consistent with school policy, and their decision not to permit the showing of the tape was predicated on several factors. The main factor was that school officials were concerned that permitting the videotape to be shown to a second-grade class might lead students to assume that the school district endorsed the message of a young child accepting Jesus Christ as his or her savior. A secondary consideration was the teacher's view that the use of videotapes was inconsistent with the "VIP" program, which emphasized that student would develop self-esteem through oral presentations in the classroom.

A federal district court adopted the school district's motion for summary judgment on the basis that the actions of school officials did not implicate the student or parent's right to freedom of speech or free exercise of religion under the First Amendment. According to the court, it is well settled that school officials may limit student-initiated speech that occurs as part of the curriculum in the closed forum of a classroom, as long as their actions are reasonably related to legitimate pedagogical concerns. Both the teacher's desire to discourage videotapes (because that practice circumvented the objective of teaching oral communication skills) and the district's interest in avoiding the appearance of endorsing religious views were reasonable pedagogical bases for denying the showing of the videotape.[5]

T-Shirt Ban by School Officials Is Permissible Based on Pedagogical Concerns

Two students in a Massachusetts high school sought a preliminary injunction from a federal district court in order to prohibit school officials from banning the wearing of T-shirts, one offering a suggestive sexual slogan and the other bearing a slang reference to male genitalia. One of the shirts carried the slogan, "Coed Naked Band; Do It to the Rhythm," while the other announced, "See Dick Drink. See Dick Drive. See Dick Die. Don't Be a Dick."

The federal court refused to issue a preliminary injunction, concluding that the students were unlikely to prevail on the merits of their claim of a violation of First Amendment rights. In the court's view, the interest of school officials in enhancing students' comfort level and opportunity to learn outweighed any interest the two students might have in protected speech.

The court noted in particular that school officials were concerned with the potential the shirts might have in contributing to a sexually charged environment and to demeaning women. Taking judicial notice of the high incidence of sexual harassment in schools nationwide, the court concluded that the school's interest in diffusing a sexually charged environment would prevail over the student's interest in free expression, even where the items banned may be relatively innocuous in today's world.[6]

Clear District Policy Negates Students' Expectation of Privacy in Locker Search

School administrators in a Wisconsin high school had been experiencing problems with gun possession at the school in the fall term. Reports of gun possession, as well as instances of a gun being fired at a weekend athletic event and a school-sponsored dance, led school officials to authorize a random search of school lockers on the Monday after the weekend's events. The random search found a gun and cocaine in one student's locker. The weapon and the drugs were handed over to police, who sought a criminal conviction against the student.

The Wisconsin Supreme Court held that the search of the locker was reasonable under restrictions imposed by the Fourth Amendment as interpreted by the United States Supreme Court in *New Jersey v. T.L.O.*[7] The state court held that the proper inquiry was whether students had any reasonable expectation of privacy in the use of their lockers. District policy, published in the student handbook, stipulated that school lockers were the property of the district and "at no time does the Milwaukee school district relinquish its exclusive control of lockers provided for the convenience of students. Periodic general inspections of lockers may be conducted by school authorities for any reason at any time." Since the student had no reasonable expectation of privacy, the search did not violate constitutional rights, and the seizure and use of the evidence in a criminal proceeding was proper.[8]

Strip Search Is Justified at Inception and Reasonable in Scope

Administrators in an Illinois high school undertook a strip search of a student enrolled in a behavioral disorder program following observations by teachers and administrators of an unusual bulge in the crotch area of the student's sweat pants. The student, who was 16, had been rumored to have smoked marijuana on the school bus and to have failed to complete a drug rehabilitation program. Teachers and students had previously reported that the student had failed a drug test and had been in possession of drugs at school.

Believing that the student was "crotching" drugs, and concluding that a pat down would be too intrusive and ineffective in locating drugs, two male administrators accompanied the student to a locker room, locked the door after determining that no other persons were in the area, and made the student remove his street clothes and put on a gym uniform. The administrators had sought parental consent for the search, but the parent, reached at home by telephone, had refused consent. In the course of the visual inspection of the student's naked body, no drugs were found.

The student brought an action for damages against the two administrators under the provisions of Section 1983 of the Civil Rights Act of 1964, alleging that the search violated his rights to privacy. A federal district court granted summary judgment for the district and the school administrators, and an appeal was taken to the Seventh Circuit Court of Appeals.

In determining that the strip search was consistent with the Fourth Amendment, the appeals court noted that the search was justified at inception because there were reasonable grounds for suspecting the search would turn up evidence that the student was in possession of drugs. Despite the court's recognition that subjecting a student to a nude search is an intrusion of the individual's basic justifiable expectation of

privacy, the court found that the administrators based their decision to conduct the search on a number of relatively recent incidents reported by teachers and aides as well as their personal observations. The cumulative effect was sufficient to create a reasonable suspicion that the student was concealing drugs.

The court also found that the search was reasonable in scope. Factors the court felt weighed in favor of administrators included the fact that the search was conducted in the privacy of the locker area by persons of the same sex as the student; the student was not compelled to stand naked, but was allowed to change into gym clothes while his street clothing was examined; and the administrators stood a discrete distance from the student while he changed.[9]

Modified Strip Search Is Within Limits of Fourth Amendment

After a high school teacher detected a strong odor of marijuana on a student during the administration of an examination, she reported her suspicion and the student was escorted from the room by a security guard and taken to the office of the dean of students. Both the security guard and the dean reported the smell of marijuana and described the student's behavior as lethargic.

After questioning the student, the dean of students left the room and two school security guards undertook a search that began by examining the student's jacket and book bag. After a pat down, the student was told to remove his shirt and was asked whether he was wearing gym shorts under his pants. The student admitted that he was wearing gym shorts, and was then told to remove his shoes, socks, and pants and to pull his shorts tight around his crotch area to permit observation of whether he was concealing any drugs. At no time did the two employees conducting the search touch the student while his pants were lowered, and the student was never naked in front of the school officials. The search produced no evidence of drug possession.

In reviewing the student's claim that the actions of the school officials violated his rights under the Fourth Amendment, the federal district court granted a motion for summary judgment in favor of the district and school administrators on the basis that the search was justified at inception and reasonable in scope. The court concluded that the suspicions of school officials, predicated on the smell of what was suspected to be marijuana and the "sluggish" behavior of the student, provided a reasonable suspicion to justify the search. In determining that the search was reasonable in scope, the court was influenced by the fact that the student was subject to search in relative privacy, was not compelled to remove his undergarments, and was neither threatened nor touched inappropriately.[10]

Search of Hand Luggage of Students Boarding Field Trip Bus Is Permissible

Under school policy in a New Jersey school district, junior high school students who participated in a voluntary field trip and picnic were subject to a search of hand luggage before boarding the school bus for the trip. School officials required parents to sign a permission slip that included a statement that hand luggage would be searched. A student whose parent had signed the permission slip was subjected to a search of his hand luggage and a cooler, as were all other students who attended the field trip. The parent and student brought an action against the school district alleging that the search violated the right

to be free from unreasonable searches and seizures under the Fourth Amendment.

A New Jersey appeals court affirmed the judgment of a trial court in favor of school officials and the local district policy. The court applied the reasoning of previous decisions, concluding that the interest of school officials in ensuring that students did not bring prohibited "contraband" on a field trip justified the policy. Although there was no evidence of individualized suspicion for the search, the court rationalized the blanket search policy by pointing to its deterrent potential in discouraging students from bringing prohibited items, as well as the special duty of supervision that was created in the context of a field trip in which supervising teachers would not have the level of control over students available in the school setting. Further, the policy did not subject students to the potential for searches at the discretion of school officials, since a "checkpoint" policy meant the search before boarding the bus would reduce abusive use of searches by supervising teachers. Finally, the search, limited as it was to hand luggage and announced beforehand, was regarded as reasonable in scope to promote the school's interest in providing supervision, discipline, and control.[11]

Court Upholds Random Urinalysis Testing for Student Athletes Based on History of Drug Problems in School and Community

An Oregon school district instituted a policy of random urinalysis testing for student athletes in response to a history of drug problems in the school and community. Occurrences that caused concern included: drug paraphernalia confiscated on school grounds; an increase in school disruptions and discipline problems; and open use of drugs observed at a local café across the street from the high school. Informal interviews with students and parents confirmed drug use by students, particularly among student athletes. Coaches testified to instances in which athletes appeared to be under the influence of alcohol during competitive sports events, and student athletes were found to have used alcohol following athletic events. Special educational programs were instituted in the school to discourage and deter drug and alcohol use, but appeared to be ineffective.

The urinalysis program that was instituted involved testing all students at the beginning of the athletic season followed by random weekly testing. Anonymity in the testing program was provided, and positive tests had to be confirmed through a second testing. If a second test was positive, the student and parent received a hearing at which the student could choose between an assistance program and weekly testing for a period of six weeks or suspension from the athletic program.

When a seventh-grade student signed up to participate in the district's athletic program, his parents refused to sign the consent form that was required in order to permit the urinalysis testing. The student was denied the opportunity to participate in the athletic program, and the parents sued the district.

The federal district court found evidence of a pervasive drug problem at district schools and took particular notice that students involved included a large number who participated in interscholastic athletics. The court ruled that the drug testing policy was reasonable under the standards of the Fourth Amendment. The court held that random urinalysis testing of student athletes was justified by the district's interest in preventing drug and alcohol use among student athletes,

used the least intrusive methods possible by ensuring confidentiality of test results and permitting students to produce a sample without direct witness observation, and was based on specific evidence of drug-related injuries and disciplinary concerns. In its decision, the court emphasized that the school district had demonstrated a compelling need for the testing program that outweighed the individual interest in privacy under the Fourth Amendment.[12]

Security Guard's Frisk of Youth Observed in Restricted Area Is Justified

A school security officer in a New York high school observed a young person entering the school in an area that was off limits. Failing to recognize the individual as a student, the guard requested the youth to present a school identification card. When the young man was unable to do so, the guard sought to direct the youth to the school office by taking his elbow and leading him. As he took the youth's elbow, the guard's hand brushed against what he thought might be a gun in the student's waistband. A subsequent pat down and frisk resulted in the recovery of a pistol. At a delinquency hearing in which the youth was charged with criminal possession of a weapon, he sought to suppress the introduction of the weapon into evidence.

The state appeals court ruled that the frisk which resulted in the recovery of the weapon was justified when the officer requested the youth to produce identification after he had entered an off-limits area of the school. The officer was permitted to undertake the frisk based on his apprehension that the student was carrying a weapon, and the guard's reasonable concern for his own safety.[13]

Evidence Obtained in Search of Student's Car Cannot Be Used in Later Criminal Prosecution

A Texas high school principal received information that a student was selling drugs and undertook to question and search the student. After a pat down, the student was ordered to turn his pockets inside out, remove his shoes and socks, and pull down his pants. No drugs were found, but the student had $300 in cash in his wallet. In response to the question, "Do you sell drugs?" the student said, "Not on campus."

A week after this search, the school secretary informed the principal that the student was leaving campus at 9:30 a.m. to attend his grandfather's funeral. A local sheriff's officer assigned to the school and a school security guard were informed that the principal suspected the student's motives for leaving campus. A check with the student's relatives revealed that the student's grandfather had not died.

When questioned by the principal, the student denied that he drove to school, but other students informed school officials that the student had driven a Buick to school that morning. The student was subject to the same search procedure as the week before, and car keys were found. Following a search of the student's locker, the student, principal, and the two law enforcement officers went to the parking lot and searched the student's car. Drugs found in the trunk of the car were confiscated, leading to the student's arrest and prosecution.

A state appeals court ruled that the evidence obtained in the search of the vehicle violated the student's right to be free from illegal search and seizure under the Fourth Amendment. The court concluded that the principal had the right to detain the student based on a concern that the student

was planning to skip school. It was reasonable for the principal to investigate why the student was skipping school, and a pat down in those circumstances was justified for safety reasons. However, the scope of the search that followed the pat down was unjustified, and the search of the student's clothing, person, locker, and automobile were excessively intrusive in light of the infraction of attempting to skip school. Nor could school officials argue that the scope of the search was justified on the basis of the information obtained in the previous week's search. Consequently, the evidence obtained in the search could not be used in the criminal prosecution of the student.[14]

Due Process "Liberty" Extends to Protect Students from Amorous and Coercive Intentions of Teachers

A Texas teacher and coach with almost 20 years of service in the public school district had a reputation for developing romantic attachments to his female students that included writing explicit love letters, exhibiting favoritism in class, and physically touching them in a manner not becoming a teacher. In the 1986-87 academic year, the teacher became intimate with a freshman student at the high school, taking her to lunch and providing her with alcoholic beverages, giving her high grades without requiring that she do any work, and physically touching and kissing her. At one point, the coach wrote a valentine card to the student expressing his love for his "sweetheart." The valentine was discovered by a friend of the student and turned over to the school principal, who acknowledged that the coach had a reputation for flirting with girls, but took no action except transferring the friend out of the coach's class.

When the superintendent of schools learned that the coach and student had been seen caressing each other at a basketball game, he and the principal met with the coach. However, the coach's relationship to the student continued and was common knowledge among students, faculty, and some parents. Before the end of the school year, the 15-year-old student was having sexual intercourse with the coach at a number of locations both on and off school grounds. One of these incidents that occurred off of school grounds was reported to the principal and superintendent, but again, no action was taken.

At another point, the student's parents discovered and reported handwritten inscriptions on photographs of the coach that had been sent to their daughter. Although the inscriptions suggested a romantic relationship, the superintendent took no action other than to question both the coach and his victim; after denials of any relationship, the matter was dropped.

Finally, when the student's parent discovered letters from the coach to their daughter, they brought the matter to the attention of their family attorney, who persuaded the student to admit the sexual liaison that had taken place over the past year. The student explained that she had kept the matter secret all this time because she feared the repercussions of disclosure. The attorney reported this confession to school officials. Coincidentally, on that same day another student reported that she too had been victimized by the coach during the year. The coach was suspended without pay, later resigned, and pled guilty to criminal charges in connection with the incident.

When the parents and student sued the superintendent and principal for violation of her Fourteenth Amendment rights, the school administrators sought a ruling that they were entitled to qualified immunity because the student was not

deprived of any clearly established constitutional rights when she was sexually molested by the coach, that they had no constitutional duty to protect her from the coach, and that their conduct in connection with the allegations of sexual misconduct was objectively reasonable.

The Fifth Circuit Court of Appeals held that the student had a firmly established constitutional right under the due process and equal protection clauses of the Fourteenth Amendment to be free from sexual molestation by her teacher, and that the superintendent and principal had an affirmative, constitutionally based duty to protect her from such an intrusion into her bodily integrity. The court remanded the case for further proceedings because a genuine issue of material fact existed as to whether the superintendent and principal acted with deliberate indifference to the student's constitutional rights.

School officials owe students an affirmative duty of protection from the type of assault involved in this case. On remand, the student would have the opportunity to prove that the school officials received notice of a pattern of unconstitutional acts committed by the subordinate, that they demonstrated deliberate indifference or tacit authorization of the offensive acts, that they failed to take sufficient remedial action, and that this failure proximately caused injury to the student.[15]

School's Rule Prohibiting Loitering Near School Grounds Is Upheld

An Illinois high school student was subject to a three-day suspension for loitering in an area that had been restricted by school officials. The student had left the school grounds at the end of the school day, but remained on a sidewalk adjacent to a gate that had been placed off limits to students because of community complains that students who frequented the area showed disrespect for property and disregarded traffic safety regulations. The school district's disciplinary manual stipulated that students were not permitted in off-limits areas at any time, and the school had notified parents by letter that the gate area was off limits and that loitering was not permitted in the area.

The student was provided with an informal hearing on the day following the incident, and was advised of a three-day suspension. A second informal hearing was provided to the student and parents at the school, and a formal hearing was provided on a later request of the parents. The student and parent then challenged the application of the penalty on the grounds that school officials violated the rights to assembly, speech, and due process of law.

The federal district court took the position that it would be undesirable for a federal court to become involved in the day-to-day operation of schools, and concluded that only where the actions of school officials directly and sharply implicate basic constitutional rights would intervention be appropriate. The court then considered the principal challenge to the disciplinary rule prohibiting loitering — that the rule was too vague to be susceptible to a common interpretation by reasonable people and should be regarded as void. Although some degree of uncertainty might apply to the term "loitering," the court recognized that school disciplinary rules need not be drawn with the same precision as a criminal statute. The school's letter to parents notifying them of the rule specified that students might pass through the gate area, but were not to pause to congregate. Since the school may properly regulate student conduct during the student's ingress or egress to and from school property, and the

school has a legitimate interest in protecting the property of adjacent landowners by exercising the *in loco parentis* power of school officials, the promulgation of the rule was within the authority of school officials, and their application of a three-day suspension was reasonable.[16]

Student Who Failed Competency Examination Can Be Denied Opportunity to Graduate With Peers

A Texas high school student and his parent sought a temporary restraining order that would allow the student to graduate with his classmates. The student had failed to successfully complete the math portion of the Texas Assessment of Academic Skills, a statewide competency examination that students must pass in order to be awarded a high school diploma. Although the student had been given repeated opportunities to pass the examination, he failed to meet the minimum score requirement in math by one point. The complaint filed in the federal district court by the student and parent alleged that the state of Texas had denied the student due process because he was not given sufficient notice that he would have to pass the competency examination, and that his classes did not adequately prepare him to pass the examination.

The federal district court denied the student and parent relief and held that, while students have a legitimate expectation they will receive diplomas upon completing academic requirements, the requirement for a minimum score on the competency examination was a reasonable requirement of which the student had received adequate notice. The testimony of teachers and the school principal established that students were given written information on the competency examination upon entering the freshman year, and that teachers regularly discussed the testing requirements with their students in classes. Educators testified that the student had received instruction in the subject areas covered by the examination and had the benefit of two tutorials designed to help students who had failed the math portion. Furthermore, the Texas Education Agency provided booklets describing the test objectives and skill areas, and teachers had designed course curricula specifically to include the material described in the state test objectives. The testimony of school officials, uncontradicted by the student or parent, effectively rebutted the allegations of the complaint; therefore, the court denied the request for an injunction.[17]

Drug Treatment Option in Disciplinary Code Is a Permissible Alternative to Suspension

A Florida high school student who admitted to his principal that he had consumed alcohol prior to a high school football game was subject to a five-day suspension under a school district disciplinary code that prohibited being under the influence of alcoholic beverages. The rule provided that, if a parent guaranteed that the student would be enrolled in an approved drug or alcohol treatment program, the suspension would be reduced to three days. In challenging the disciplinary sanction, the student and parent contended that the student was denied due process because no evidence was produced that he was under the influence of alcohol. In addition, the parent and student argued that the provision permitting students to attend a drug or alcohol treatment program as part of the suspension violated substantive due process, since it illegally coerced students to enter treatment programs where there was no medical necessity.

In response to the complaint, the district court ruled that material issues of fact must be resolved before a determination as to whether school officials acted in good faith to enforce the disciplinary policy could be determined. The student alleged that the principal selectively enforced the disciplinary policy, allowing differential treatment for selected students, and that the school board failed to make an independent investigation before approving the principal's disciplinary decision. As these allegations might indicate a lack of good faith on the part of school officials, substantive due process claims might be involved that required further fact-finding by the court.

As to the student's contention that the option of a treatment program had an illegal coercive effect, the court held that the expressed intent of state statute law and board policy was to offer the student a choice of attending such a program as an alternative to suspension, and the policy was not a violation of substantive due process rights.[18]

Expulsion for Selling Drugs Off the School Campus Is Upheld

A 17-year-old Delaware high school student, expelled for selling drugs off school grounds to an undercover police officer, challenged his expulsion as a violation of due process of law. The student was arrested at school in December based on a series of drug sales he had made in June and July of the previous summer. An indefinite suspension was implemented following the arrest, so that school officials could investigate the situation and evaluate the danger to other students posed by the arrested student. An expulsion hearing was initiated at the end of January, and the local board agreed to provide homebound instruction for the student in the interim. At this hearing, evidence of the off-campus drug deals was presented, but not contested by the student and his attorney. The student was expelled for the remainder of the academic year.

On appeal of the expulsion, the student argued that the school board lacked the authority to suspend him for conduct off school grounds. The school district argued that the broad discretionary powers available to it under the state's authority to deal with a threat to the safety and welfare of students were sufficient to permit the student's expulsion.

The state appeals court held that local administrators are in a better position to determine the impact on their students of the presence of a drug dealer within the student body. These same officials are in a better position to judge the impact on their students of off-campus criminal activity. The court was not persuaded that the board had acted arbitrarily or capriciously in expelling the student, given the pervasiveness of society's drug problem and the authorities' interest in protecting the health, safety, and welfare of students.[19]

Decision Denying Student Athletic Eligibility Is Successfully Challenged

An Indiana high school athletic association declared a student ineligible for varsity athletic competition after the student moved to live with his father and enrolled in a new school. The student had been having discipline problems while attending school in another district and living with his mother. Principals at the student's former and current school completed recommendation forms noting that the student's transfer was not athletically motivated, but the association's commissioner rejected those recommendations, and the executive committee of the association

affirmed that judgment. The student sought an injunction against enforcement of the rule denying him eligibility, and a federal district court entered a permanent injunction against enforcement of the rule on federal due process grounds.

In response to an appeal by the association, the Seventh Circuit Court of Appeals affirmed the lower court's injunction, but based its decision on state law rather than federal due process standards. The court reviewed the transfer of eligibility rules of the association, and found that if the transfer was due to a change of residence out of the student's control, then an exception that would permit eligibility applied. In reviewing the record, the court found that the commissioner's testimony related to denying the exception contained several contradictory explanations, and no written record of the reasons for the ruling was provided. The court found the decision arbitrary and capricious because of the inconsistencies in the commissioner's testimony and his inability to explain the application of the eligibility rules to the student's situation.[20]

Special Education

The range and complexity of legal issues that have grown out of the provisions for special education in public schools compel the development of a new chapter in *School Officials and the Courts* beginning with the 1993 edition. In this area, provisions of the Individuals with Disabilities Education Act (IDEA) will be addressed as these provisions are interpreted by federal courts. The cases that follow address issues related to the provision of free, appropriate public education, mainstreaming, disciplining the handicapped, and unilateral placement.

Provision for Sign Language Interpreter at Religious School Is Upheld

A California special education student, profoundly deaf, received special education and related services under the IDEA, including a sign language interpreter in all regular classes, up until the ninth grade. At that point, his parents enrolled him in a Catholic high school and requested that the services of a sign language interpreter be provided by the local school district. The school district refused this service on the basis that the establishment clause of the First Amendment would prohibit the provision of the requested services in a parochial school. The parents challenged the school district's decision in federal court.

The federal district and appeals courts found for the school district, reasoning that providing an interpreter in a sectarian school would create the impression that the public school district would endorse the religious messages being interpreted and would therefore impermissibly advance religion in violation of the establishment clause. The United States Supreme Court reversed, ruling that the school district can be required to provide a sign language interpreter for a child at a private religious school without violating the establishment clause of the First Amendment. The Court concluded that no violation would occur because the interpreter would be present due to the exercise of a private decision of the individual parents and not due to state decision making. The services of an interpreter create no financial incentive for parents to enroll their child in religious schools, and no money actually flows to the private school.[1]

Transportation Must Be Provided from Religious School to Public School

A special education student enrolled at a private, parochial school sued the local school district for its refusal to provide transportation from the private school to a public school special education class. The student attended the private school for most of the school day, but attended special education classes at the public school each weekday afternoon as part of an Individualized Education Plan (IEP) developed by the school district. The school district responded to a challenge to the proposed IEP by indicating that the issue of transportation in this instance would not be an issue appropriate for a due process hearing and the complaint should be addressed to a court of competent jurisdiction. The parents then filed suit in a federal district court.

The federal court ruled that the provision of transportation as a related service under provisions of the IDEA would not violate state or federal law on the establishment of religion, and enjoined the school district to provide transportation from the sidewalk of the student's parochial school to her special education classes at the public school. The court reasoned that the transportation service would benefit the child, not the parochial institution, and would serve the intent and purpose of the IDEA without supporting, aiding, or sustaining the parochial school.[2]

Compensatory Education Is Required Due to District's Failure to Provide Appropriate Placement

A New Hampshire special education student was found to have received special education services in the local public school that were inappropriate to his needs. The failure to provide appropriate services was the basis for a hearing officer's decision to order a private school placement geared toward the provision of special education for learning disabilities and health impairments, including individualized instruction in a structured, integrated, language-based program with not more than six students per class. Rejecting the school district's proposal that the student attend regular classes and receive speech and language therapy, counseling, and reading tutoring, the hearing officer recognized the student's need for intensive, compensatory education.

A federal appeals court reviewed the mainstream setting proposed by the school district and ruled that this placement was inappropriate because a similar individualized education plan for this student had resulted in little or no gain the previous year. In accepting the hearing officer's decision that a private placement was warranted, the court found that the student's lack of progress was the result of the district's inappropriate programming since early 1982. As to an award of compensatory education, the court rejected the school district's claim that compensatory education can only be awarded when there is evidence that the district exercised bad faith or failed to provide special education services. The court ruled that compensatory education need only be supported by a finding that the district had failed in its responsibility to provide appropriate programming as defined by the IDEA.[3]

Presumption Exists in Favor of Regular Classroom Placement

Parents of an eight-year-old child with Down's syndrome objected to a New Jersey school district's placement of their child in special education classes for educable mentally retarded students. The parents asserted that the school district failed to meet its obligation under the IDEA to place their child in the least restrictive environment.

The district made its placement decisions in part on the child's kindergarten placement, which included an arrangement in which he attended both a developmental kindergarten class and a special education class in his first year in the district. During this period, the child exhibited disruptive behavior in the regular class, and an aide was provided for him in that setting.

The Third Circuit Court of Appeals ruled that the IDEA creates a presumption that the child will be placed in the regular classroom, and that the district must provide those supplemental aids and services necessary for the child to benefit from that setting. The child can only be removed from the regular classroom when the district can demonstrate that, even with supplemental aids

and services, the nature and severity of the child's disability make regular class placement inappropriate.

The two-part test that the school district must meet includes: 1) Can the child be educated satisfactorily in a regular classroom with supplemental aids and services? and 2) If not, has the child been included in school programs with non-disabled children to the maximum extent appropriate? The court affirmed the view that the district did not give adequate consideration to various supplementary aids and services, did not demonstrate that the services in the special class clearly outweighed those available in the regular class, and did not demonstrate convincingly that the disruptions caused by the child while in kindergarten would continue in the present situation, which was two years later.[4]

Appropriate Education Need Not Be Optimal Education

Adoptive parents of a 12-year-old special education student classified as behavior disordered/emotionally disturbed sought to place the child in a residential facility. The parents challenged the IEP developed by the Louisiana school district, which had placed the child in a self-contained classroom with other behavior disordered children. In an extensive review process, the hearing officer determined that the child's medical and educational needs were so inseparable that residential treatment was required, but the state review panel found that the preponderance of evidence did not prove that the child's current placement was inappropriate.

On review, the federal district court noted the extensive and conflicting evidentiary record in the case, and applied a two-part review process, first determining that the school district had complied with the procedural requirements of the IDEA, and second, determining that the child's IEP was reasonably calculated to enable the child to receive educational benefits. The parents had presented extensive testimony from psychologists and psychiatrists who evaluated the child and concluded that a residential placement was necessary for the child to make academic progress and realize his ability. However, the court noted that the legal requirement is not the provision of optimal services; rather, the law requires appropriate educational services in the least restrictive environment available. The court was convinced that the existing placement provided meaningful educational benefit, and based this conclusion on the fact that the student was performing reasonably well on basic tests of school achievement, had the opportunity to interact with other students in physical education classes, at recess and lunch, and had the services of a teacher's aide, computers, and a teacher certified in special education.

The court noted that the adoptive parents felt they could no longer control the child at home. The adoptive parents were the child's grandparents, both of whom were retired and one of whom, the child's grandmother, had a work-related disability. While sympathetic to the adoptive parents' concerns, the court emphasized that it was not the legal responsibility of the school district to remedy the problems the child had in the home environment.[5]

Agency Rule Requires Educational Services for Special Education Students Who Are Suspended or Expelled

An Indiana school district brought suit alleging that a rule by the U.S. Office of Special Education and Rehabilitation Services was a leg-

islative rule requiring notice and an opportunity to comment under provisions of the Administrative Procedure Act. The rule promulgated by the federal agency required states to provide educational services to disabled children who were disciplined with long-term suspension or expulsion. The agency had notified states of the rule by dissemination of a letter advising state education officials, specifying that states must continue to provide educational services to disabled students who were expelled or subject to long-term suspensions for conduct unrelated to their disability.

On appeal, the Seventh Circuit Court of Appeals held that the rule was interpretative rather than legislative and did not trigger the notice and comment requirements of the federal Administrative Procedure Act. The court invoked a test in which it considered whether the rule merely states what the agency thinks the statute law provisions mean, or whether the rule creates new law, rights, or duties. When the latter is involved, administrative procedures must be applied. In this case, however, the court regarded the rule as interpretative and not subject to comment.[6]

Specialized Nursing Services Are Not Related Services

Parents brought suit challenging a New York administrative judge's decision that a local school district was not required to provide a specially trained nurse to assist their daughter at school. The child, a respirator-dependent quadriplegic, required a nurse who could perform tracheostomy suctioning and urinary catheterization several times each day. The nurse needed to be trained in the mechanics of the respirator and able to do "bagging" during suctioning and in the event of a power failure or mechanical problem with the respirator. Although the school nurse could be trained to perform these functions, this option was not feasible because it would prevent the school nurse from performing her usual duties.

The state appeals court affirmed the decision of the administrative law judge and held that these kinds of in-school nursing services fell outside the provisions of "related services" under the IDEA. The determination that the services were not "simple school nursing services" which the district was required to furnish was consistent with decisions in other jurisdictions finding that these highly skilled nursing services are more akin to medical services, which the school district is not required to furnish.[7]

In-School Suspensions Effectively Deny Student Due Process

A Pennsylvania school district appealed from a decision of an administrative law judge who had ordered compensatory education services based on a finding that the district had unlawfully excluded a 15-year-old child with learning disabilities from school. The child was suspended for 14 days and given in-school suspensions (ISS) for an additional 11 days during the 1991-92 school year. With regard to the in-school suspensions, a reviewing panel concluded that the student was given a choice between "going to ISS or going home." On seven occasions she chose to go home, and the hearing panel regarded this as a *de facto* suspension. As a result, the panel awarded the child a semester of compensatory education.

Although district officials argued that in-school suspensions are only intended to exclude the student from regular classes and not from

school, the state appeals court noted that school officials continued to assign in-school suspensions after it became abundantly clear that the child would choose to leave school. In allowing this pattern to repeat itself, the school acted contrary to the dictates of the IDEA, which mandates that disabled children not be excluded from school without due process procedures. This *de facto* or constructive suspension resulted in substantial interference with the child's right to a free and appropriate education, and the appropriate remedy was compensatory education services.[8]

Parents Are Denied Reimbursement for Unilateral Placement

Parents of a child with learning disabilities removed the child from public school in Massachusetts after his first three years and enrolled him in a private school devoted to teaching students with learning disabilities. The parents sought reimbursement for their unilateral placement decision, although they had not obtained the local district's consent for the change in placement. A state hearing officer concluded that the local district had no obligation to pay for the child's private education. The parents appealed, and a federal district court affirmed the decision of the administrative hearing officer on the grounds that the school district's IEP for the child met the federal test of adequacy because it was "reasonably calculated to enable [the child] ... to receive educational benefits." On appeal of this decision, the parents argued that the district court applied the wrong test, and should have invoked the Massachusetts requirement that the special education program provide the "maximum possible benefit."

The First Circuit Court of Appeals affirmed the decision of the district court and found for the school district, denying the parents compensation for the cost of their private school placement. The court found that the IEP prepared for the student, which provided that the child spend most of his day learning alongside non-handicapped children and provided for a "mainstream facilitator" who would observe the student, work with teachers, and provide academic support classes, satisfied the state requirement for maximizing the student's development. Even though the parents contended that the child would have better academic progress at the private school, the court held that the IEP must prescribe a format in which the handicapped child is educated, to the maximum extent appropriate, with children who are not handicapped. Although the federal district court applied the federal test for adequacy of the educational program, rather than the more stringent state test, the appeals court found no error, since the review panel at the state level had clearly applied the state test in concluding that the school district's IEP was adequate under the state law.[9]

Board Compromises Privacy Rights Guaranteed by Special Education Law

Parents of a 14-year-old Connecticut youth receiving special education services for learning disabilities sued a local school district for a violation of the constitutional right to privacy. The parents alleged that the board had mentioned the name of the child in official school board minutes in relation to a motion to review the child's program. These minutes were distributed for public inspection. When a hearing officer found that the local district's IEP was inadequate and the parents were entitled to reimbursement for diagnostic services, the district released the names of the

parents and child to a newspaper, which published the names.

In the opinion of the federal district court, the parents had a reasonable expectation of privacy based on the IDEA and its procedural safeguards. The regulations of the IDEA prohibit the disclosure of personally identifiable information and specifically require school boards to protect the confidentiality of personally identifiable information. Since the parents had a reasonable expectation of privacy under the federal statute, that expectation is protected by the United States Constitution and an action to redress that violation of privacy could be maintained under Section 1983 of the Civil Rights Act of 1964. The court refused to grant the school district's motion to dismiss the action and held that the complaint stated a cause of action against the school district.[10]

Lack of a State-Approved School Frustrates Appropriate Placement

A New York student with dyslexia compounded by an attention deficit disorder had been classified as learning disabled and received public school special education services from the first grade through 10th grade. Despite the annual IEPs developed and implemented for the child over that period, test scores at the beginning of the 10th grade showed that the child read at the third-grade level. Parents decided that the local district had had enough time to teach the child to read and challenged his IEP as inappropriate.

The school district initially agreed to place the child in a specialized residential facility, but recanted because the proposed facility was not approved by the state. A hearing officer concluded that the school's previous programs for the student had been a failure, but noted that the school proposed for placement was not approved by the state and that no private school dealing with the child's unique combination of disabilities was registered as an approved school. The parents undertook a unilateral placement at the residential facility. After nine months, the child's reading scores had improved dramatically.

The parents sought conditional approval of the residential facility, compensatory damages, and an order to the state to institute new procedures for the approval of schools. The state sought to dismiss the parent's complaint altogether. In response, the federal district court ruled that the previous IEPs did not yield educational benefit for the child; therefore, providing an IEP that continued the previous years' program was inappropriate. However, the court noted that the state did not violate the IDEA by requiring that placement be made from an approved list of facilities. The court ordered remand for development of an appropriate education program, and if no appropriate placement was available or the student was not accepted by any of the schools on the state's pre-approved list of private schools, the state would then be ordered to expand the alternative placements on its pre-approved list. The court also pointed out that the child would be entitled to compensatory education beyond age 21 based on the failure of the district to provide an adequate educational program at the public school.[11]

Religion

The First Amendment to the United States Constitution forbids the establishment of religion by the state and guarantees religious liberty. Cases involving the establishment of religions have traditionally applied a three-part test to determine whether there is a violation of the constitution: Is the primary purpose of the state's policy secular? Does the policy or practice have a principal effect that neither advances nor inhibits religion? Does the policy foster excessive entanglement between the state and the religious organization?

A new test, sometimes referred to as a "coercion" test, has recently emerged in federal judicial opinions. The U.S. Supreme Court articulated this test in 1992 in *Lee v. Weisman.*[1] The Court found that an invocation delivered at a high school graduation by a member of the clergy at the invitation of the school district was unconstitutional. The Court stated that, since attendance at high school graduation ceremonies is virtually obligatory for most students, a prayer at the ceremony was a state-sanctioned religious activity that involved a "coercive pressure" to participate. The implications of the new test are reported in some of the cases that follow.

Voluntary, Nonproselytizing, Nonsectarian Student Invocations and Benediction at Graduation Are Permissible

A local school board in Texas adopted a resolution that provided for the use of invocations and benedictions at high school graduations at the discretion of the graduating class and with the advice and counsel of the senior class principal when delivered by a student and of a nonsectarian and nonproselytizing nature. A group of graduating seniors and their parents brought suit to enjoin the school district from permitting such invocations and benedictions.

The issue presented to a federal appeals court was whether, in light of the 1992 *Lee v. Weisman* ruling, the student-led invocation and benedictions would violate the establishment clause of the First Amendment. The *Weisman* decision had concluded that a nonsectarian, nonproselytizing invocation delivered by a rabbi at the invitation of the school district did violate the establishment clause.

The appeals court articulated a number of elements that would render religious activities in public schools unconstitutionally coercive. The coercive effect of religious practices in public schools would be unconstitutional when the government directed a formal religious exercise in such a way as to oblige the participation of others. In this case, unlike *Weisman,* there was no school board direction compelling the practice. There was no inherent religiosity in the school board policy, and since student initiation and participation in the activity was voluntary, the psychological pressure for all students to take part was minimized.

The court concluded that the secular purpose of the invocations and benedictions was the solemnization of the event, and advancement of religion would be minimal. The school board policy was upheld, and the appeals court affirmed a district court's denial of injunctive and

declaratory relief to the complaining parents and their children.[2]

Seniors May Vote to Have Student-Led Prayer at Graduation

In a similar case, a federal district court ruled that the practice of allowing seniors in an Idaho school district to vote on whether to include a prayer in their graduation ceremony did not violate the establishment clause of the First Amendment.

The court noted that the students controlled arrangements for the graduation, even though the faculty and administrators supervised the graduation exercises. A long-standing tradition of the school was that prayers were offered by students during the graduation ceremony. Applying the reasoning of the Fifth Circuit in *Jones v. Clear Creek Independent School District* (see the preceding summary), the court held that where the students are free to choose whether any prayer will or will not be included in their graduation programs, the mere fact that graduation ceremonies in the district are supervised by school officials does not constitute the kind of state involvement that violates the establishment clause.[3]

Supreme Court Ruling Permits Use of School Facilities by Religious Groups

A New York school district adopted policies consistent with state law that permitted after-hours use of school facilities by local community groups, but prohibited use of the property for religious purposes. A local evangelical religious group sought to utilize the school auditorium for a six-part film/lecture series on the negative influences of the media and the need for a return to traditional Christian family values. The district denied the request, citing the school policy that prohibited use of the facility for religious purposes. In challenging this policy, the religious group's claims were rejected by the federal district court and the court of appeals.

The United States Supreme Court reversed the lower federal courts, and ruled that the school district policy violated the religious group's right to free expression under the First Amendment. The Court held that the school district erred by not maintaining a neutral policy toward facilities use. A content-related prohibition on use of facilities for religious purposes was impermissible, even in light of the school district's claim that such a restriction was necessary to meet the establishment clause requirement of separation between church and state. Factors that mitigated against any violation included the after-hours nature of the request, the fact that the film was not sponsored by the school, and the fact that attendance was open to the public. Taken together, these circumstances would not create any perception that the district was endorsing religion, and any benefit to the religious group would be purely incidental.[4]

Portrait of Christ Ordered Removed from High School

A federal district judge in Michigan ordered the removal of a two feet by three feet portrait of Jesus Christ bolted to a wall just outside the principal's office near the intersection of main hallways in the high school. The portrait hung for at least 30 years at this location before a student brought a complaint that the portrait violated the establishment clause. In ordering the removal, the court noted that the painting was prominently displayed and had as its primary purpose the promotion of religion.[5]

Prayer Led by Coach Violates Constitution

At a junior high school in Texas, the coach of the girl's basketball team regularly led the team in prayer at the beginning and end of practices and games. These prayers were held with the girls on their knees and with heads bowed and the coach standing over the team members. After observing a prayer held at mid-court following a game, one student's father advised her that she did not have to participate in this activity, and she subsequently ceased all participation. The student endured separation from the team, questioning from her teammates, a teacher calling her a "little atheist," and heckling from game spectators as a result of her choice. In response to the parent's complaint to school district authorities, the district directed that prayers at pep rallies be discontinued, but insisted that the pre- and post-game prayers were within the coach's and players' rights to free exercise of religion.

The Fifth Circuit Court of Appeals affirmed a district court decision holding that the school's practice of allowing the coach to sponsor prayers at games and practices violated the establishment clause of the First Amendment. The court rejected the argument that the district was merely accommodating the free exercise rights of its staff and students, and noted that teacher involvement and participation in such activities in anything more than a custodial capacity would be impermissible. Teacher-led activities were, in the view of the appeals court, a violation of the establishment clause just as school-initiated prayers led by local community religious leaders would be. Finally, the district's claim that free exercise justified the practices was rejected by the court. When the two clauses (free exercise and establishment) are in conflict, free exercise must give way to the prohibitions of the establishment clause.[6]

Bible Distribution Creates Coercion

An Indiana school district policy permitted members of the Gideons to talk and distribute Bibles to elementary school students. Two representatives of the Gideons would come to the local schools once a year after clearing a date with the principal. The representatives would go to fifth-grade classrooms during regular school hours and speak for a minute or two about their organization, and then students would be instructed to take a Bible from a stack placed on a table or desk. Teachers did not participate in handing out the Bibles.

Parents asserted that the school district's practice of Bible distribution was a violation of the establishment clause of the First Amendment. The school district defended the practice on the grounds that the district had an open forum policy that allowed any community group to pass out literature to students.

On review by the Seventh Circuit Court of Appeals, the federal court ruled that the practice of distributing the Bibles violated the establishment clause. In rejecting the school district's argument that the school was a public forum, the court noted that such an argument would apply only if the school district remained neutral. The court could not be convinced that the elementary school children would perceive the practice as neutral given the facts of the distribution arrangement.

In applying a "coercion analysis" like that found in *Lee v. Weisman,* the court noted that school officials assisted the Gideons, and that subtle pressure to conform by taking one of the Bibles would be significant for fifth graders.

Regarding the question of religiosity, the court noted that the Gideon Bible is clearly Christian, being composed of "The New Testament of Our Lord and Savior Jesus Christ" along with limited excerpts from the Old Testament; thus, the government could be considered to be promoting the views of one sect. Finally, with regard to participation, the court found that the students had few options with which to dissent: they were compelled to sit through the presentation and would be unlikely to leave the room or refuse the Bible.[7]

Equal Access Act Preempts State Constitutional Provision

Several students in a Washington State high school sought to organize a religious club in the fall of 1984. The school district denied the request, although it permitted other student-initiated groups to meet on school grounds during non-instructional time, including groups such as the Pep Club, Chess Club, and Ski Club. The denial was based on the school district's view that recognition would violate provisions of the U.S. Constitution, as well as the state of Washington's constitutional requirement for separation of church and state.

The federal claims were resolved in favor of the students in a landmark U.S. Supreme Court decision interpreting the provisions of the Equal Access Act to public high schools.[8] On remand to the district court, the court ruled that although the federal constitutional claims had been resolved, the state constitutional standards precluded the federal Equal Access Act from requiring the use of school premises by a student-initiated religious club.

In appealing this decision, the school district argued that provisions of the Act which stated that the Act shall not be construed to require schools to sanction meetings that are "otherwise unlawful" should be applied to allow school officials to ban student religious groups because these groups violated the separation of church and state under the state constitution. The Ninth Circuit Court of Appeals disagreed, and held that the Equal Access Act preempts state law, and therefore school officials must comply with requirements under the Act to recognize and permit student-initiated religious clubs.[9]

Requirement for Pledge of Allegiance Does Not Violate Constitution

The state of Illinois requires that pupils in elementary schools recite the Pledge of Allegiance each school day. A parent of an elementary school pupil objected to the requirement, contending that the words in the Pledge, "under God" promote religion in violation of the establishment clause of the First Amendment. The parent, along with an organization known as the "Society for Separationists," asserted that the statute compelled a religious observance, which violated free exercise and establishment clause provisions of the First Amendment.

The federal court of appeals ruled that the requirement did not violate the establishment clause. The statute did not create penalties for refusal to participate in the Pledge, nor were students compelled to recite the Pledge.

The court concluded that the reference to "under God" constituted a ceremonial allusion to a deity which withstood constitutional scrutiny. Under this view, school personnel could lead the pledge daily without violating the establishment clause, provided that students could elect not to participate in the ceremony.[10]

Hair Length Is Within the Meaning of Religious Free Exercise

Native American students representing the Alabama and Coushatta Tribes of Texas sought injunctive and monetary damages against a Texas public school district that sought to enforce a dress code restricting the hair length of male students to no longer than the top of a standard dress collar. The code had been in operation for the previous 25 years, and was implemented to foster a learning atmosphere, minimize disruption attributable to appearance and hygiene, create an attitude of respect for authority, prepare students to enter the workplace, and ensure that students presented a favorable impression for the district in the community.

Students who were members of the tribes were subject to in-school detention for failure to comply with the dress code restriction on hair length. The students obtained a temporary injunction from a federal district court on the grounds that the dress code violated their rights to free exercise of religion and freedom of speech under the First Amendment.

The federal district court recognized the student's claims, but denied the request for an award of monetary damages against the school district. The court noted that testimony at trial established that, before 1900, many southwestern tribes wore their hair long as a symbol of moral and spiritual strength. It was a common belief that hair, similar to other body parts, was sacred, and that a haircut would be equivalent to dismemberment of a body part.

The court also took judicial notice that a "Pan-Tribal" movement among Native Americans had encouraged a return to traditional religious practices that included wearing long hair as a symbol of religious significance and a part of a unique heritage. Students testified that they participated in ceremonies and cultural activities in which hair length played a relevant part, and convinced the court that they had a sincerely held religious belief in the spiritual properties of wearing their hair long.

While federal courts have held that reasonable hair length restrictions do not violate free speech, this case recognized the claim that the hair length restriction constitutes an undue burden on free exercise of religion. The court concluded that the school's policy on hair length was not a valid means of achieving the objectives of maintaining discipline, fostering respect for authority, and projecting a good public image, when weighed against sincerely held religious beliefs of the Native American students. An exemption to the school code was necessary where the regulations unduly burdened the students' beliefs.[11]

Free Exercise Is Not Compromised by Home-School Requirements

Iowa parents sought to educate their eight- and 10-year-old children at home, but failed to file with the state a home schooling report pursuant to state statute. The report required an outline of the course of study including subjects to be covered, weekly lesson plans, and time spent on areas of instruction. The parents were charged and convicted of a misdemeanor for failure to file the report.

In response to the parents' contention that the requirement for a report unconstitutionally interfered with their right to free exercise of religion, the Iowa Supreme Court balanced the interests of the state against those of the parents. Although the parents argued that their rights to practice their religion outweighed the interests of

the state, the court rejected this argument in favor of the state's legitimate interest in ensuring that minimum educational standards are set for all children. In the court's view, the reporting requirement was a reasonable means to achieve that goal.[12]

Torts and Related Statutory Liability

Tort liability includes both negligent and intentional conduct that involves a breach of duty causing injury actionable in damages. Negligent liability may include breach of a duty of reasonable care, adequate supervision, or proper instruction. Intentional liability may include harassment, defamation, or excessive use of force.

State and federal statute law may permit other civil actions that create liability. Examples of these statutory liability standards include failure to report child abuse or violations of federal constitutional rights protecting individual liberty.

Classroom Assault and Rape Could Not Have Been Foreseen

A female student in an Ohio middle school had remained after school to work on a science project. The teacher supervising the student had left her alone in a classroom. During this time, three male students who had just been released from detention and directed to go home entered the classroom and physically attacked and raped the female student. The three males had been instructed to leave school and had been seen walking towards an exit. The female student reported the rape immediately.

In determining whether the school district was liable for negligence, the state appeals court considered whether the duty of adequate supervision had been breached and whether the incident could or should have been foreseen by school personnel. Although the three male students had been involved in misconduct, there was nothing in their past records to suggest that they were a danger to other students. The district's duty was to provide no more than ordinary supervision for the students involved, and it met this obligation. Since the attack could not have been foreseen based on the previous history of the students involved, the court found that school personnel could not reasonably have been expected to guard against the attack.[1]

Risk that Student Would Strike Parent Is Subject to Jury Determination

A parent who went to a Florida junior high school to pick up materials her son needed to complete assignments was struck without provocation by a 16-year-old student. The student struck the parent in the face, causing serious injury which required extensive medical treatment. The parent filed suit against the school district, contending that the school district had breached a duty to protect her from a student with a violent history of misconduct. Although the student had a documented propensity for violence against other teachers and students, he had never before attacked a parent.

The Florida appeals court reversed a lower court decision granting summary judgment to the school district. The appeals court held that there was a genuine issue of fact regarding whether reasonable persons might have foreseen the potential violent conduct of the student, which must be resolved through trial on the merits of the complaint. In its decision, the court considered the school district's duty of care to the parent as an invitee on the school's grounds and the

school's duty to supervise students. In examining the record to determine whether the school had sufficient notice of the student's propensity toward violence, the court found several instances in which the student had engaged in unprovoked attacks on other students and acts of insubordination and general lack of respect for authority which had escalated over time. The ample evidence of past violence from this student, notwithstanding that a parent had never been a target of the violence, created a genuine issue of fact regarding the foreseeability of the attack on a parent.[2]

District Does Not Have Duty to Provide Security to Employee

A New York physical education teacher who was injured when an unidentified individual threw a desk chair unit from a stairwell platform brought a personal injury action against the school district. The high school teacher contended that the school district owed a duty to protect an employee against the risk of injury by providing adequate security against the acts of students or nonstudents who might enter the school property.

The state appeals court held that the district was not liable for the teacher's injuries on the ground that the school failed to provide proper security against physical attacks. Typically, a provision for security against physical attack by a third party is a governmental function, and no liability arises from the failure to perform the duty unless a special duty has been established. The court concluded that the teacher had not established that the district owed her any special duty of protection.[3]

School Has Duty to Provide Safe Place in School Parking Lot

A Florida high school student was shot by an assailant as he drove from a school parking lot after an athletic event. The injured student had waited in the lot to pick up his girlfriend, who was returning by school bus from an away game. As the student was leaving the lot with his girlfriend, the assailant put a gun to his head. The student floored the accelerator of the vehicle and was shot as he attempted to speed out of the parking lot.

The school was located in a high-crime area, and school officials had arranged for an armed off-duty policy officer to guard the lot whenever the lot was open to vehicle traffic. In this case, the lot was to be policed until students and staff could return from an away football game. However, arrangements with the off-duty officer on this evening were at variance with school policy because the officer was not prepared to remain in the lot after 10:30 p.m., well before the time students could be expected to return from the game. Therefore, no officer was on duty at the time of the attack. Another student testified that he had observed the assailant in possession of a pistol several minutes before the attack, and would have reported this information to a police officer if one had been available.

The appeals court reversed a summary judgment for the school district, finding that under the circumstances the district was under a duty to maintain its premises in a reasonably safe condition. Although the district argued that there was no obligation to this student because he was hit by the bullet as he sped out of the parking lot, the court concluded that the duty extended to the only means of ingress and egress to and from the student parking lot, and did not end merely

because the student's actual injury occurred a few feet beyond its property line. Following the traditional common law standard, the court found that the landowner (the district) had a duty to maintain the premises in a reasonably safe condition on behalf of invitees (students).[4]

School Staff Are Not Liable in Assault of Child by Her Uncle

A Tennessee appeals court was asked to determine whether a public school principal and his secretary were negligent in releasing an 11-year-old child from school in the custody of her uncle. The child had complained of being ill at school, and a call was made to her father's place of employment, but he could not be found. The message that the child needed to be picked up was delivered to the child's uncle, who worked at the same place. When the uncle arrived at the school to sign the child out, the child manifested no fear or apprehension of her uncle and willingly went with him. After the uncle signed the child out of school, he assaulted and raped her.

On a previous occasion, the child had signed her mother's name to a sign-out sheet and left school. The parents testified that, following this incident, they instructed the principal not to let anyone sign the child out of school except the parents. The principal testified that the parents instructed him only that he was not to let the child sign herself out. The school policy was that when a child leaves school prior to the end of the school day, the child must be signed out in the school office by the parent, guardian, or parent designee.

The state appeals court affirmed the opinion of a trial judge that the school personnel were not negligent in releasing the child, and that the injuries caused by her uncle's criminal assault were unforeseeable. Schools have a duty to exercise ordinary care for the safety of students, but not every violation of a school or board policy is negligence per se. The law, not the administrative policies of an employer, fixes the standard of duty — although the latter may be admitted in evidence as to the question of whether the defendant has exercised proper care.

Even if the acts of the principal and secretary in permitting the student to sign out with the uncle did amount to negligence, the court concluded that the negligence would not have been the proximate cause of the child's injuries because the acts of the uncle were not foreseeable. There was nothing in the record that should have alerted school officials to any danger, and thus they could not have been expected to take steps to prevent the danger to the child.[5]

School District Is Not Liable for Dog Attack in Parking Lot

An Ohio high school student who was attacked by a pit bull brought into the parking lot of the high school by another student sued the local school district for the injuries he sustained. The student contended that the district was negligent in that its school security guard failed to adequately supervise the parking lot where the attack took place. In addition, the student maintained that the local board was negligent in that it failed to provide the security guard with specific security training. The board admitted that the guard did not have any formal security training, but took the position that the guard's lack of training was not the proximate cause of the animal attack.

A state appeals court affirmed the action of a trial court granting summary judgment to the school district. The court ruled that there is no general duty upon school officials to watch over

every child at all times. Rather, the duty, unless a more specific obligation is assumed, is to exercise that care necessary to avoid reasonably foreseeable injuries.

There was no evidence in the record that school officials should have been aware that a student would bring a pit bull to school, and no school officials saw the student with the dog prior to the attack. While one might argue that employing a security guard for the school placed a duty on the school district to prevent a student from bringing a dog into the parking lot, this hypothesis is premised on the belief that the guard was hired exclusively to guard the parking lot. In addition, the court agreed with the school district's position that the guard's lack of formal training was not the proximate cause of the animal attack, nor was there any evidence to suggest how additional training might have reduced the likelihood of an attack.[6]

Failure to Follow Security Plan Establishes Liability

Two New York students, sisters attending the same Bronx high school, brought suit against the school district for injuries they sustained when they were assaulted while attempting to leave school at the end of the school day. One of the two sisters had accidentally bumped into a female student while waiting on school grounds. The student threatened and kicked the girl before a bystander separated the two students. The sister went back into the building and sought to report the incident at the school security office, which was not open. After leaving this office, she spoke with a teacher in the hallway, explaining that she had been threatened and was fearful that she would be attacked again. The teacher advised the student to return to the security office, but when she returned it was still locked. The student then met her sister and attempted to leave the building by another exit. At that exit, which was usually patrolled by school security at the end of the school day, both sisters were attacked by a group of students and non-students. One of the girls was stabbed in the hand, the other was struck in the head with a hammer.

At trial, the plaintiffs advanced three theories in support of a breach of a supervisory duty by the school district. First, the teacher to whom one of the students reported the initial altercation failed to take appropriate action. Second, the school was negligent in failing to follow its own security plan that safety officers would be stationed at the exit areas during school dismissal time. And, third, given the circumstances, particularly the student's conversation with the teacher prior to the injury, security officers should have been so stationed.

The appeals court overturned the trial court's motion setting aside a jury verdict for the plaintiffs. The appeals court held that the jury could find that the board, having recognized the need for and put into effect a security plan, breached its duty to provide the plaintiffs with adequate supervision at a time when such supervision was most critical. The failure to provide heightened supervision in the circumstances justified the jury award of damages.[7]

District Is Not Liable for Student Injuries Without Evidence of Gross Negligence

A South Carolina high school student sued the local district for injuries she sustained when attacked by a non-student on a school bus. The driver of the bus had observed an incident involving an argument between the student and

another student and her adult sister at a school bus stop. The day following this altercation, the non-student and her mother boarded the bus against the protests of the driver and threatened the student. This incident was reported to the district's director of transportation services, who was told specifically that the student had been attacked and that her assailants had threatened to return. The director met with the two students involved and admonished them about their behavior, then attempted to call their parents. One parent was at work, and her employer would not allow her to take calls, while the other parent's phone had been disconnected. After the attack, the bus driver advised the non-student that if she was at the bus stop, he would not stop the bus. The non-student did not appear at the bus stop the next school day, but was able to board the bus unnoticed the following day. Before the driver could prevent her from rushing down the aisle, she stabbed the student with a knife.

The trial court granted summary judgment to the school district, and the state appeals court affirmed this decision. In South Carolina, a school district may be liable for a student's injuries when the district's responsibility to supervise, protect, or control students is exercised in a grossly negligent manner. In this instance, the court found that the school officials had exercised at least slight care, and thus there could be no liability because the definition of gross negligence is the failure to exercise slight care. The court reasoned that although school officials might have called police to enforce a state criminal statute on interfering with a school bus, the act of trying to contact the student's parents and attempting to prohibit a non-student from boarding the bus was sufficient to demonstrate the exercise of at least slight care.[8]

Duty to Prevent Attacks on Student Is Not Within Due Process Liberty Interest

A freshman student in an Ohio high school alleged that she had been subjected to repeated harassment and assaults by other students, and that teachers and the principal had witnessed several of these attacks. The student contended that school officials made no effort to stop the students from assaulting her, despite repeated requests for help. In bringing an action against the school district, the student, through her parent, sought damages on the claim that she had been deprived of her constitutional rights, actionable under Section 1983 of the Civil Rights Act of 1964.

A federal district court cited the view expressed by one federal appeals court that simple negligence is not sufficient to support a civil rights action for the violation of constitutional rights. The court dismissed the claim against the school district, taking the position that the two theories on which school district liability could be based were not applicable.

Under one theory of liability, the district could be held liable if it were shown that the district and student had a special relationship giving rise to a constitutional duty to protect the student. Such an affirmative duty would arise where a student is placed in a custodial relationship and effectively prevented from taking action to protect himself or herself because of the state's actions. This theory has been applied to those who have been incarcerated or institutionalized, but the court was unwilling to place a student who is compelled to attend school in the same category as a prisoner or mental patient for purposes of liability under the federal law.

Under the second theory of liability, the district could only be held liable for its policies,

customs, or practices if the acts complained of by the student were perpetrated by someone acting as an agent of the state, such as a school employee. Since the underlying violative acts were committed by students, the court could not impose liability upon the school district.[9]

Qualified Privilege Protects Remarks Concerning Teacher

A teacher who was employed at a private, religiously affiliated Ohio high school was convicted of contributing to the delinquency of a minor after he provided alcohol to one of his students. He remained on the teaching faculty at the school for another four years, but his contract was not renewed after 1987-88. The teacher had initiated a lawsuit against the school, but had not proceeded until an incident in which he alleged that two school officials had contacted parents of two of his former students and informed them that the teacher had been convicted of "corrupting a minor" and implied that the teacher was a homosexual. When the teacher sued the officials for slander, the officials countered by presenting evidence that they had met with the two sets of parents concerning the teacher's continued contact with his former students and had advised the parents of the former criminal conviction, but, in response to a direct question from the parents, had denied that they had any evidence that the teacher was gay.

A defamatory statement is one that tends to cause injury to a person's reputation or exposes that person to public hatred, ridicule, shame, or disgrace. Even if the school officials' statements were defamatory, a defense of qualified privilege may be introduced. In this case, the state appeals court recognized a qualified privilege based on the common interest of the school officials and parents in the safety, education, and welfare of the students involved. Because the statements were made in the performance of a duty that related to a common interest, and were limited in distribution to those having that interest, the statements were protected by a qualified privilege.

To overcome the qualified privilege, the teacher would have had to shown that the statements were motivated by actual malice rather than a good-faith effort to communicate concerns to the parents involved. While the teacher alleged that the comments were motivated by a desire to retaliate against the teacher for filing the earlier lawsuit, there was no evidence in the record that would support this claim. Consequently, the defense of qualified privilege justified the trial court's decision to grant summary judgment to the school officials.[10]

Potential for Defamation Exists in Headmaster's Letter to Parents

A discharged Massachusetts school teacher alleged that she had been libeled by a letter written to parents by the school headmaster. The letter, which requested that parents of fourth-grade students come to the school for an explanation of a situation that led to the termination of the teacher's contract, included statements that an "incident" involving the teacher led to her termination, and that when asked to leave the school, the teacher and her husband "went into the fourth-grade classroom without ... permission" and behaved in an "inappropriate" way in dealing with the children. The headmaster contended that these words could not reasonably be read as discrediting or otherwise injuring the reputation of the teacher.

The state appeals court conceded that the letter contained no words such as "dishonest," "insane," or "diseased" which, if false, would quite obviously denigrate the person described. However, the court concluded that it would not take a fevered imagination to think that an "incident" brought to the attention of the board of trustees, the specifics of which warranted a teacher's immediate dismissal, must have involved misconduct of an egregious sort. The innuendo of professional misconduct, coupled with the observation that the teacher was inappropriate in the way she dealt with children, was enough to reverse a summary judgment for the headmaster and justify further proceedings because material facts were in dispute.[11]

Principal Is Not a Public Figure for Purposes of Defamation Claim in Georgia

The Supreme Court of Georgia has addressed the issue of whether a public school principal is a public official for purposes of a defamation action. In the case, a principal sued a teacher for statements the teacher had made that attacked the principal's competence as an administrator. A jury found for the principal. The jury verdict was appealed on the grounds that the principal was a public official who must prove that statements about his job performance were made with actual malice before recovery of an award of damages for defamation. However, the state supreme court declined to hold that a principal is a public official, and affirmed the award of damages to the school administrator.

In *New York Times v. Sullivan,*[12] the U.S. Supreme Court held that the constitutional guarantees of free speech and press require a public official in a libel action brought against critics of the official's conduct to prove that the defamatory statement was made with actual malice. In finding that the principal was not a public official, the court interpreted the Sullivan case to apply to those officials who govern them. In the court's view, principals are removed from the general conduct of government, and are not policy makers at the level intended by the designation of public official. While people should be free to question and criticize those who govern them, the interest of a principal in protecting his or her professional reputation outweighed the right to public criticism in this case.[13]

Vermont Court Recognizes Principal as a Public Figure in Defamation Action

In contrast to the previous case, the Supreme Court of Vermont has taken the position that a principal *is* a public official, and affirmed a judgment in favor of a regional school district in a case in which the principal had sued the district alleging defamation. In this case, the school district implicated the principal in a broader inquiry involving the misuse of district funds and declined to renew the principal's contract, stating that considerations of "ethics, professional conduct, the ability to manage personnel and manage finances" were related to the decision not to renew. The trial court ruled that the principal was a public official, and, absent evidence that the district's statements were published with reckless disregard for the truth, granted a motion for summary judgment in favor of the district.

The trial court's decision was affirmed by the Vermont Supreme Court on the grounds that the principal was a public official. The court concluded that a charge of misappropriation of funds is precisely the type of criticism that the First Amendment was designed to protect.

Having determined that the principal was a public official, the court considered whether he had proved with clear and convincing evidence that the district had acted with actual malice by publishing statements either with reckless disregard for their truth or falsity, or with knowledge of their falsity. Since the district board had relied on an independent auditor's report in making its claims, and had undertaken an independent investigation of the alleged misappropriation of funds, the court found no evidence to support a charge of reckless disregard for the truth that would overcome the district's defense.[14]

Reference Notes

Reference notes for cases or judicial decisions generally list the following: the parties' names, the volume number, the abbreviated title of the official case reporter series cited (e.g. "A.2d." refers to *Atlantic Reporter*, second series), the page number on which the court's opinion begins, the court that rendered the decision, and the year of the decision. For example:

Willis v. School Dist. of Kansas City, 606 S.W.2d 189 (Mo. App. 1980).

West Publishing Company's *National Reporter System*, the standard primary source for American case law and judicial decisions at the state level, groups each of the states and the District of Columbia into seven regional series:

1. Atlantic (A.):	Conn., Del., D.C., Me., Md., N.H., N.J., Pa., R.I., Vt.
2. Northeastern (N.E.):	Ill., Ind., Mass., N.Y., Ohio
3. Northwestern (N.W.):	Iowa, Mich., Minn., Neb., N.D., S.D., Wis.
4. Southern (So.):	Ala., Fla., La., Miss.
5. Southeastern (S.E.):	Ga., N.C., S.C., Va., W.Va.
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7. Pacific (P.):	Alas., Ariz., Cal., Colo., Hawaii, Idaho, Kan., Mont., Nev., N.M., Okla., Ore., Utah, Wash., Wyo.

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1. *Federal Reporter* (F. or F.2d)	U.S. Court of Appeals
2. *Federal Supplement* (F. Supp.)	U.S. District Courts

Decisions rendered by the United States Supreme Court are reported in the *United States Reports* (U.S.).

School Boards and Board Members (pages 2-8)

[1]485 U.S. 589 (1988).

[2]*Fort Wayne Community Schools v. Fort Wayne Education Association*, 977 F.2d 358 (7th Cir. 1992).

[3]*United States v. Board of Educ. of Consolidated High School Dist. No. 230*, 983 F.2d 790 (7th Cir. 1993).

[4]*Null v. Board of Educ. of Jackson*, 815 F.Supp. 937 (S.D.W.Va. 1993).

[5]*Streirer v. Bethlehem Area School Dist.*, 987 F.2d 989 (3rd Cir. 1993).

[6]*Smith v. School City of Hobart*, 811 F.Supp. 391 (N.D. Ind. 1993).

[7]*Local 1186 v. State Bd. of Labor Relations*, 620 A.2d 766 (Conn. 1993).

[8]*Cain v. Fernandez*, 595 N.Y.S.2d 181 (App. Div. 1993).

[9]*Amarillo Independent School Dist. v. Meno*, 854 S.W.2d 950 (Tex.App. 1993).

[10]*First Westco Corp. v. School Dist. of Philadelphia*, 811 F.Supp. 204 (E.D. Pa. 1993).

[11]*Crest Construction v. Shelby County Bd. of Educ.*, 612 So.2d 425 (Ala. 1992).

[12]*J.D. Graham Construction v. Pryor Public Schools*, 854 P.2d 917 (Okla.App. 1993).

[13]*Fairbanks North Star Borough School Dist. v. Bowers*, 851 P.2d 56 (Alaska 1992).

Administrators (pages 9-12)

[1]*Kinsey v. Salado Independent School Dist.*, 950 F.2d 988 (5th Cir. 1992) (en banc), cert. denied, 112 S.Ct. 2275 (1992).

[2]*Eaton v. Newport Bd. of Educ.*, 975 F.2d 292 (6th Cir. 1992).

[3]*Jantz v. Muci*, 976 F.2d 623 (10th Cir. 1992).

[4]*Klein v. Board of Educ. of Independent School Dist. No. 671*, Hills-Beaver Creek, 497 N.W.2d 620 (Minn.App. 1993).

[5]*Clinton v. Wake County Bd. of Educ.*, 424 S.E.2d 691 (N.C.App. 1993).

[6]*Durso v. Taylor*, 624 A.2d 449 (D.C.App. 1993).

Finance (pages 13-16)

[1]Opinion of the Justices, (Choice in Education), 616 A.2d 478 (N.H. 1992).

[2]*Rolla 31 School Dist. v. State*, 837 S.W.2d 1 (Mo. 1992).

[3]*Idaho Schools For Equal Education v. Evans*, 850 P.2d 724 (Idaho 1993).

[4]*McDuffy v. Secretary of Executive Office of Educ.*, 615 N.E.2d 516 (Mass. 1993).

[5]*Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Tenn. 1993).

[6]*Butt v. State of California*, 842 P.2d 1240 (Cal. 1992).

Teachers and Other District Employees (pages 17-30)

[1]*Ward v. Hickey*, 996 F.2d 448 (1st Cir. 1993).

[2]*State Bd. for Elementary Educ. v. Howard*, 834 S.W.2d 657 (Ky. 1992).

[3]*Sanguigni v. Pittsburgh Bd. of Public Educ.*, 968 F.2d 393 (3rd Cir. 1992).

[4]*Stroman v. Colleton County School Dist.*, 981 F.2d 152 (4th Cir. 1992).

[5]*Brewer v. Purvis*, 816 F.Supp. 1560 (M.D.Ga.1993).

[6]*Moore v. Board of Educ. of Fulton Public School No. 58*, 836 S.W.2d 943 (Mo. 1992).

[7]*Coyne v. City of Somerville*, 972 F.2d 440 (1st Cir. 1992).

[8]*Roberts v. Houston County Bd. of Educ.*, 819 F.Supp. 1019 (M.D. Ala. 1993).

[9]*Pandazides v. Virginia Bd. of Educ.*, 804 F.Supp. 794 (E.D.Va. 1992).

[10]*Sedalia No. 200 School Dist. v. Missouri Commission on Human Rights*, 843 S.W.2d 928 (Mo.App. 1992).

[11]*Cameron v. Board of Educ. of Hillsboro City*, 820 F.Supp. 336 (S.D. Ohio 1993).

[12]*Gerig v. Board of Educ.*, 841 S.W.2d 731 (Mo.App. 1992).

[13]*Williams v. Castor*, 613 So.2d 97 (Fla.App. 1993).

[14]*Rickel v. Cloverleaf Local School Dist.*, 608 N.E.2d 767 (Ohio App. 1992).

[15]*Gunter v. Board of Trustees*, 854 P.2d 253 (Idaho 1993).

[16]*Phillis v. Board of School Directors of Mechanicsburg Area School Dist.*, 617 A.2d 830 (Pa.Cmwlth. 1992).

[17]*West v. Tangipahoa Parish School Bd.*, 615 So.2d 970 (La.App. 1993). See also *Roberts v. Rapides Parish School Bd.*, 617 So.2d 187 (La. App. 1993) in which a board's decision to suspend a teacher without pay for one semester and place her on probation for a second semester was justified for "neglect of duty and incompetence" in showing an "R" rated film containing violence and foul language as a recreational activity in her seventh-grade class.

[18]*McCorkle v. Sunnyside School Dist. 201*, 848 P.2d 1308 (Wash.App. 1993).

[19]*Malverne School Dist. v. Sobol*, 586 N.Y.S.2d 673 (App. Div. 1992).

[20]*Rosario v. Burke*, 605 So.2d 523 (Fla. App. 1992).

[21]*Hope v. Charlotte-Mecklenburg Bd. of Educ.*, 430 S.E.2d 472 (N.C.App. 1993).

[22]*Ballard v. Giltner Public School Dist. No. 2*, 494 N.W.2d 855 (Neb. 1992).

[23]*Scheideman v. West Des Moines Community School Dist.*, 989 F.2d 286 (8th Cir. 1993).

[24]*Board of Directors of the Lawton-Bronson Community School Dist. v. Davies*, 489 N.W. 2d 19 (Iowa 1992).

[25]*Underwood v. Henry County School Bd.*, 427 S.E.2d 330 (Va. 1993).

Pupils (pages 31-42)

[1]393 U.S. 503 (1969).

[2]*Chandler v. McMinnville School Dist.*, 978 F.2d 524 (9th Cir. 1992).

[3]*Clark v. Dallas Independent School Dist.*, 806 F.Supp. 116 (N.D. Tex. 1992).

[4]*Hedges v. Wauconda Community Unit School Dist.*, 807 F.Supp. 444 (N.D.Ill. 1992).

[5]*DeNooyer by Denooyer v. Livonia Public Schools*, 799 F.Supp. 744 (E.D.Mich. 1992).

[6]*Pyle v. South Hadley School Comm.*, 824 F.Supp. 7 (D.Mass. 1993).

[7]469 U.S. 325 (1985).

[8]*In Interest of Isaiah B.*, 500 N.W.2d 637 (Wis. 1993).

[9]*Cornfield by Lewis v. School Dist. No. 230*, 991 F.2d 1316 (7th Cir. 1993).

[10]*Widener v. Frye*, 809 F.Supp. 35 (S.D. Ohio 1992).

[11]*Desilets v. Clearview Bd. of Educ.*, 627 A.2d 667 (N.J. Super A.D. 1993).

[12]*Action v. Vernonia School Dist.*, 796 F.Supp. 1354 (D.Or. 1992).

[13]*In the Matter of Kevin P.*, 587 N.Y.S.2d 730 (App.Div.1992).

[14]*Coronado v. State*, 835 S.W.2d 636 (Tex. App. 1992).

[15]*Doe v. Taylor Independent School Dist.*, 975 F.2d 137 (5th Cir. 1992).

[16]*Wiemerslage v. Maine Township High School Dist. 207*, 824 F.Supp. 136 (N.D.Ill. 1993).

[17]*Williams v. Austin Independent School Dist.*, 796 F.Supp. 251 (W.D.Tex. 1992).

[18]*Kubany by Kubany v. School Bd. of Pinellas*, 818 F.Supp. 1504 (M.D. Fl. 1993).

[19]*Howard v. Colonial School Dist.*, 621 A.2d 362 (Del.Sup. 1992).

[20]*Crane v. Indiana High School Athletic Association*, 975 F.2d 1315 (7th Cir. 1992).

Special Education (pages 43-48)

[1]*Zobrest v. Catalina Foothills School Dist.*, 113 S.Ct. 2462 (1993).

[2]*Felter v. Cape Goirardeau School Dist.*, 810 F.Supp. 1062 (E.D. Mo. 1993).

[3]*Manchester School Dist. v. Christopher B.*, 807 F.Supp. 860 (D.N.H. 1992).

[4]*Oberti v. Board of Educ. of the Borough of Clementon*, 995 F.2d 1204 (3rd Cir. 1993).

[5]*Swift v. Rapides Parish Public School System*, 812 F.Supp. 666 (W.D.La. 1993).

[6]*Metropolitan School Dist. v. Davila*, 969 F.2d 485 (7th Cir. 1992).

[7]*Ellison v. Board of Educ.*, 597 N.Y.S.2d 483 (App.Div. 1993).

[8]*Big Beaver Falls Area School Dist. v. Jackson*, 624 A.2d 806 (Pa.Cmwlth. 1993).

[9]*Amann v. Stow School System*, 982 F.2d 644 (1st Cir. 1992).

[10]*Sean R. by Dwight R. v. Board of Educ. of Woodbridge*, 794 F.Supp. 467 (D. Conn. 1992).

[11]*Straube v. Florida Union Free School Dist.*, 801 F.Supp. 1164 (S.D.N.Y. 1992).

Religion (pages 49-54)

[1]112 S.Ct. 2649 (1992).

[2]*Jones v. Clear Creek Independent School Dist.*, 977 F.2d 963 (5th Cir. 1992).

[3]*Harris v. Joint School Dist.*, 821 F.Supp. 638 (D. Idaho 1993). See also *Griffith v. Teran*, 794 F.Supp. 1054 (D.Kan. 1992), in which a nonsectarian and nonproselytizing invocation and benediction delivered by a student at a graduation ceremony did not violate the establishment clause.

[4]*Lamb's Chapel v. Center Moriches Union Free School Dist.*, 113 S.Ct. 2142 (1993).

[5]*Washigesic v. Bloomindale Public Schools*, 813 F.Supp. 559 (W.D.Mich. 1993).

[6]*Doe v. Duncanville Independent School Dist.*, 986 F.2d 953 (5th Cir. 1993).

[7]*Berger v. Rensselaer Central School Corp.*, 982 F.2d 1160 (7th Cir. 1993).

[8]See *Board of Educ. v. Mergens*, 496 U.S. 226 (1990) and *Garnett v. Renton School Dist.*, 496 U.S. 914 (1990).

[9]*Garnett v. Renton School Dist.*, 987 F.2d 641 (9th Cir. 1993).

[10]*Sherman v. Community Consolidated School Dist. No. 21*, 980 F.2d 437 (7th Cir. 1992).

[11]*Alabama and Coushatta Tribes v. Big Sandy School Dist.*, 817 F.Supp. 1319 (E.D.Tex. 1993).

[12]*State v. Rivera*, 497 N.W.2d 878 (Iowa 1993).

Torts and Related Statutory Liability (pages 55-62)

[1]*Williams v. Columbus Bd. of Educ.*, 610 N.E.2d 1175 (Ohio App. 1992).

[2]*Garufi v. School Bd. of Hillsborough County*, 613 So.2d 1341 (Fla. App. 1993).

[3]*Lasker v. City of New York*, 599 N.Y.S.2d 89 (App. Div. 1993).

[4]*Gutierrez v. Dade County School Bd.*, 604 So.2d 852 (Fla. App. 1992).

[5]*Snider v. Snider*, 855 S.W.2d 588 (Tenn. App. 1993).

[6]*Nottingham v. Akron Bd. of Educ.*, 610 N.E.2d 1096 (Ohio App. 1992).

[7]*Mirand v. City of New York*, 598 N.Y.S.2d 464 (App.Div. 1993).

[8]*Clyburn v. Sumter County School Dist. 17*, 429 S.E.2d 862 (S.C.App. 1993).

[9]*Elliot v. New Miami Bd. of Educ.*, 799 F.Supp. 818 (S.D. Ohio 1992). See also *D.R. v. Middle Bucks Area Vocational Technical School*, 972 F.2d 1364 (3rd Cir. 1992), in which the court affirmed dismissal of a complaint alleging that public high school students were molested by other students in violation of their constitutional rights.

[10]*McCartney v. Oblates of St. Francis De Sales*, 609 N.E.2d 216 (Ohio App. 1992).

[11]*Disend v. Meadowbrook School*, 604 N.E.2d 54 (Mass. App. 1992).

[12]376 U.S. 254 (1963).

[13]*Ellerbee v. Mills*, 422 S.E.2d 539 (Ga. 1992).

[14]*Palmer v. Bennington School Dist.*, 615 A.2d 498 (Vt. 1992).

Glossary of Selected Legal Terms

affirmed	Decision of a lower court upheld by a superior court.
appeal	Resort by one of the parties to a litigation to a superior or appellate court for review of the decision of an inferior court.
cert. denied	Denial by superior court to a request by a party to a litigation for the issuance of a writ of certiorari.
class action	A legal action brought on behalf of a group or class of individuals by one or more representatives of the class.
continuance	Postponement of an action pending before the court to a later time.
D.	District Court, e.g., "D. Del." (U.S. District Court of the Delaware District).
declaratory judgment	*See* "declaratory relief."
declaratory relief	Judgment of a court that construes the meaning of a law rather than resolving issues of disputed fact.
de facto	Existing without imposition of law or public authority.
defamation	Holding a person up to scorn, ridicule, or public contempt that tends to injure the person's reputation; may be criminal or civil and includes slander (spoken) and libel (written).
due process	Procedural rights to a notice of and a hearing on disputed issues of law or fact.
injunction	A prohibitive writ that forbids a party from carrying out, or continuing to carry out, an act injurious to the complainant.
in loco parentis	In the place of a parent.
jury interrogatory	A specific question directed by a judge to the members of a jury, often as part of instructions designed to guide jury deliberation.
libel	Written defamation.
liberty interest	The constitutional right to act without restraint or control, particularly as reflected in the individual's right to seek employment or avoid injury to reputation.

nolo contendere	A plea by the defendent in a criminal prosecution that, without admitting guilt, subjects him/her to conviction but does not preclude him/her from denying the truth of the charges in a collateral proceeding.
per se	By itself; established without the necessity for additional proof or evidence.
preliminary injunction	Injunction granted at the beginning of a suit pending the result of the trial.
prima facie	On first sight; on its face; sufficient to establish a given fact if uncontradicted.
pro bono	"For the good of all." Legal services provided without cost.
proximate	An act or omission of an act which in a natural and continuous chain of events causes or plays a substantial role in causing an injury or damage that would not otherwise have occurred.
remand	To send back to a lower court for the purpose of having some further action taken by the lower court.
reporter	A periodic compilation of cases.
restraining order	Order in the nature of an injunction but, unlike an injunction, it is intended only as a restraint until the propriety of granting an injunction can be decided.
slander	Spoken defamation.
summary judgment	Short, concise decision without a jury. Motions for a summary judgment are taken on the ground that there is not genuine issue of material fact; the party in whose favor a summary judgment is issued prevails as a matter of law. This type of motion may be directed to all or only part of a case.
Supreme Court term	The Court's term begins in October and runs to the following June or the completion of the case of that term; the yearly designation for the term derives from the year in which the term opens, e.g., the 1992 term began in October 1992.
torts	Private or civil wrong or injury. Remedy in this type of action has three elements: existence of a legal duty from defendant to plaintiff; breach of that duty; and damage as a result of that breach.
U.S.C.	United States Code, the federal compilation of statute laws.

EDUCATIONAL RESEARCH SERVICE

2000 Clarendon Boulevard

Arlington, Virginia 22201

Phone: (703) 243-2100
Fax: (703) 243-8316